



NOTICE OF ENFORCEMENT DISCRETION REVIEW TEAM REPORT

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Notice of Enforcement Discretion Review Team Report

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Executive Summary

In a July 8, 1994, memorandum the Deputy Executive Director for Nuclear Reactor Regulation, Regional Operations and Research (DEDR) proposed to the Director of the Office of Nuclear Reactor Regulation (NRR) that a team be established to review the Notice of Enforcement Discretion (NOED) program provided for in the Enforcement Policy and implemented by guidance contained in Inspection Manual Part 9900 (MC 9900). On July 21, 1994, the DEDR approved the team's charter. The charter required the team to look at a number of areas including the implementation of the NOED guidance, the adequacy of the guidance and policy, and recommendations for changes to the policy and procedure.

The team concluded that all NOEDs reflected adequate consideration for radiological health and safety of the public and used sound technical and safety bases. While the program was generally administered in accordance with the guidance, some aspects of the program were not being properly implemented, and questions were raised relating to the policy. The team believes that adopting the recommendations in this report will enhance the NOED process and improve our ability to reach the proper balance between the safety and efficiency goals of the NRC's Principles of Good Regulation.

I MAJOR CONCLUSIONS

I. A GENERAL ISSUES

I. A. 1 From March 17, 1993, through July 24, 1994, the staff received 100 requests for enforcement discretion. During the evaluation period, the staff issued 90 NOED letters affecting 100 licenses, 2 NOED requests were withdrawn, eight were found to be not necessary and none were denied. The NOED issuance rate was approximately 0.7 NOEDs per reactor per year, and approximately 11 percent of the issued NOEDs involved plant startup.

I. A. 2 The major causes for NOED requests were equipment failure, missed surveillances, and additional time needed to complete repairs beyond that allowed in TS. Responding to these requests, the NRC regional offices issued 63 percent of the NOEDs and NRR issued 37 percent.

I. A. 3 The NRC routinely considered enforcement action, as appropriate, for the conditions that led to the need for the exercise of enforcement discretion. Enforcement actions were taken for the vast majority of NOEDs that had violations as root causes.

I. A. 4The staff processed most NOEDs in accordance with policy and procedural guidance.

I. A. 5NRR and most of the regional offices lack adequate guidance to document and track an NOED from request through closeout.

I. A. 6In general there was close agreement, but the team found some inconsistencies between the NOED policy and the implementing procedure, MC 9900.

I. A. 7The length of time for which NOEDs are issued is acceptable, and the frequency of exercising enforcement discretion is not excessive.

I. B SCOPE ISSUES

I. B. 1Six NOEDs were issued for requirements specifically contained in regulations or for codes and standards implemented by regulations, each of which required a regulatory exemption or relief, not only a license amendment.

I. B. 2Ten NOEDs were issued for weather-related events. Two of the ten were also associated with reactor startups. The issuance of these NOEDs considered the overall public interest, which is beyond the radiological safety considerations of the NOED policy.

I. B. 3One research reactor NOED was issued. While the policy does not exclude the issuance of an NOED to a research or test reactor, the criteria of the policy are not easily applied to these types of licensees. Additionally, one NOED was issued for a TS required, but non-reactor operations, program (i.e., security).

I. B. 4Prior to NOEDs, NRR issued Temporary Waivers of Compliance (TWOCs) to permanently shutdown power reactors while requested license amendment changes were being processed. Under the present policy and procedures, such discretion is not addressed.

I. C CRITERIA ISSUES

I. C. 1Eleven NOEDs were issued for reactor startup conditions, 10 of which clearly did not meet the criteria for exercising enforcement discretion

as stated in the policy or MC 9900. However, the issuance of enforcement discretion did not present an unsafe condition.

- I.C.2 In at least two of the 90 NOEDs issued, the staff appeared not to enforce compliance with TS requirements once an allowed outage time (AOT) had expired, if the staff was considering an enforcement discretion request. The enforcement discretion policy and procedures are silent on this type of action.

II MAJOR RECOMMENDATIONS

The review team considered each of the following recommendations with respect to their effect on the scope of the enforcement discretion policy. The recommendations listed below are not expected to expand the scope of enforcement discretion beyond that presently being exercised by the staff.

II.A Clarify the enforcement discretion policy and MC 9900 guidance as follows:

- II.A.1 Allow NOEDs for processing exemption/relief requests (e.g., 10 CFR Appendix J testing or ASME Code Section XI requirements), to be included under the enforcement discretion policy.
- II.A.2 Retain a high standard for issuing an NOED for plants attempting to startup, but broaden the allowable circumstances to accommodate those conditions where the licensee has compensatory equipment that was not credited in the safety analysis that provides at least an equivalent safety function as the equipment for which the discretion is requested.
- II.A.3 On rare occasions, such as extreme weather which causes a power demand emergency and/or grid instability, the NOED policy should be changed to allow enforcement discretion to be issued commensurate with the overall public interest.
- II.A.4 Include research reactors in the policy and provide criteria and guidance as to the use of discretion for those licensees.
- II.A.5 Include permanently shutdown power reactors in the NOED policy and provide criteria and guidance as to the use of discretion for those

licensees, or develop another policy for these situations because of the largely economic basis for the discretion.

II.B Clarify the MC 9900 guidance as follows:

- II.B.1 If the decision can not be made to verbally exercise enforcement discretion prior to expiration of the AOT, then the NRC staff must ensure compliance with the TS requirements. If compliance requires substantial licensee actions, such as beginning a plant shutdown that may not be the safest thing to do under the circumstances, then the staff should expeditiously review the NOED request. However, the burden is on the licensee to provide a sufficient basis for the staff to issue enforcement discretion to allow continued operation beyond AOT expiration.
- II.B.2 NRR should issue multiple plant common condition NOEDs which are short duration, one-time only requests from individual licensees (normally issued by the region). NRR should assume NOED issuance responsibility when the region has concluded that NRR has the most experience/expertise in the given area and has requested NRR to take the lead.
- II.B.3 Detail what licensing, inspection, and documentation actions are necessary to track an NOED from request through closeout. Implement a common NRR and regional NOED tracking system accessible by the LAN.
- II.B.4 Specify upper level management oversight functional responsibilities.
- II.B.5 Provide a formal means of notifying the public in a timely manner about the issuance of all NOEDs.

II.C Continue dialogue with licensees to prevent inappropriate NOED requests or inadequate justification. Cover the enforcement discretion policy in workshops both inside and outside the NRC.

The report presents the team's findings, conclusions, and recommendations for improving both the procedural guidance and the policy. Appendix J includes a summary of all the review team's recommendations and a reference to the applicable report section for each recommendation.

1 Background

In July 1985, the staff issued Enforcement Guidance Memorandum 85-05 (EGM 85-05) to address situations where technical specification (TS) compliance would unnecessarily require plant shutdown or prevent plant startup and where the exercise of discretion to waive compliance with the license might be appropriate. The document issued to a licensee to provide such relief was called a Temporary Waiver of Compliance (TWOC). The TWOC guidance was revised periodically with the last revision in February of 1990.

On February 7, 1992, the General Counsel submitted SECY-92-043, "Exercise of Discretion Not to Enforce Compliance with License Conditions," to the Commission. The Office of the General Counsel reviewed both the existing TWOC process and the body of law affecting the Commission's discretion in the enforcement area and recommended that the TWOC process be revised. The most significant recommended change was that rather than continuing a staff-approved policy for these short duration waivers of compliance, a Commission approved policy should be added to "The General Statement of Policy and Procedure for NRC Enforcement Actions," 10 CFR Part 2, Appendix C (Enforcement Policy). The Commission approved the recommendations and directed the staff to revise the process accordingly.

On May 19, 1992, the staff submitted a change to the Enforcement Policy to the Commission in SECY-92-184 "Proposed Change to the General Statement of Policy and Procedure for NRC Enforcement Actions, 10 CFR Part 2, Appendix C." This change would incorporate the policy for short duration exercises of discretion into the Enforcement Policy. On October 13, 1992, the staff modified its recommended change in SECY-92-346 "Additional Modifications to a Change to the General Statement of Policy and Procedure for NRC Enforcement Actions, 10 CFR Part 2, Appendix C." The Commission approved the modified change to the Enforcement Policy with additional minor revisions and published the change in the *Federal Register* on March 17, 1993 (58 FR 14308). (A copy of the change to the Enforcement Policy can be found in Appendix A).

On March 29, 1993, the Office of Enforcement issued interim guidance for the issuance of Notices of Enforcement Discretion (NOED), which replaced the TWOC, in EGM 93-004. On August 6, 1993, the final procedural guidance for issuing NOEDs was added to Part 9900 of the NRC Inspection Manual and that guidance is the current standard for issuance of NOEDs (Appendix B).

In May 1994, while preparing responses to Congressional and media questions on the use of NOEDs, the staff found it difficult to gather the needed information and the information that was gathered appeared to indicate some

inconsistencies in the implementation of the NOED program. In a memorandum of July 8, the Deputy Executive Director for Nuclear Reactor Regulation, Regional Operations and Research (DEDR) addressed the apparent problems in the program by directing that a review team be assembled. The Director of NRR directed the Associate Director for Projects to prepare a review team charter and assemble a review team. On July 21, the DEDR approved the review team charter submitted by the Director of NRR (Appendix C). On July 25, the review team met formally for the first time and began its work.

2 Evaluation Activities

The review team evaluated its charter and decided to expand the period of review from March 17, 1993, through May 31, 1994, to March 17, 1993, through July 24, 1994. This increase in scope encompassed all NOED actions up to the start of the team's review and only slightly increased the number of NOEDs for the team to consider.

To complete charter objectives (1), (2), (5), (6), and task 2 of objective (4), the team wrote a checklist to follow in reviewing the NOEDs (see Appendix D). The team met with members of the Office of the Inspector General (OIG) who were conducting an audit of the staff's implementation of the NOED policy and procedures. The team received a copy of the OIG auditor's NOED checklist and found it comparable with the team's checklist.

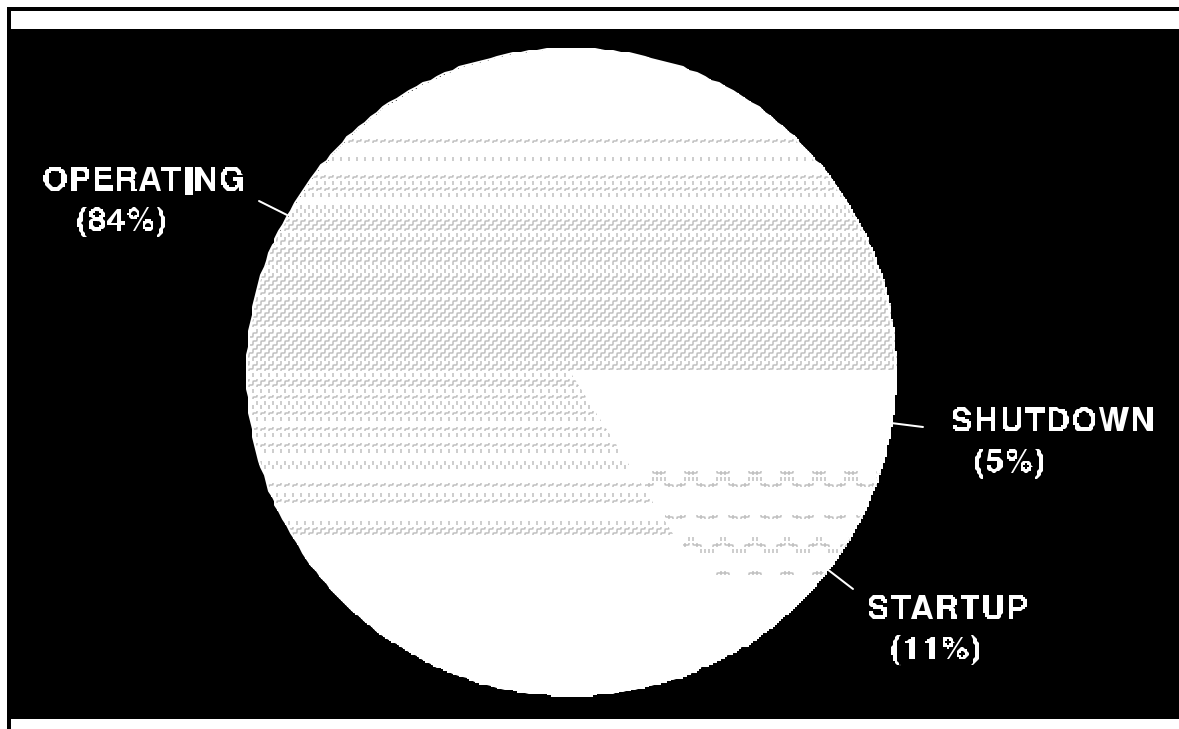


FIGURE 1 PLANT OPERATING STATUS

NRC issued 90 NOEDs (involving 100 licenses). Eight NOEDs were not necessary, two were withdrawn by the licensee, and none were denied. Figure 1 presents the operational status of the plants involved at the time of the NOED request. Appendix E is a list of all NOED actions considered by the review team.

However, the team did not do a detailed review of NOEDs withdrawn or not needed.

In this report, an *NOED* is an act of discretion exercised for a particular site, although the staff issued certain letters for multiple acts of discretion involving multiple licensees at a site and in some cases multiple sites within a utility. The definition used herein is consistent with the convention established by the guidance and the tracking system.

The team began its review of NOEDs by reviewing the records kept for the NRR projects NOED data base. These records contain copies of all the NOEDs and many of the licensee letters requesting discretion. The team later reviewed certain license amendments issued to support the NRR NOEDs, but did not gather and review all the missing licensee letters or NRC license amendments as most NOEDs included enough information.

While the team contacted NRR and regional personnel to obtain additional information on specific NOEDs, it did not interview personnel about the implementation of the NOED program because: (1) the team obtained documents with a significant amount of information; (2) OIG had interviewed staff in Region III and NRR; (3) the team included members with NOED experience from NRR, the regions, and OE; and least important, (4) the limited time available.

3 Objectives, Conclusions, and Recommendations

The following are the results of the NOED review organized by the corresponding charter objective (for example, Section 3.1 corresponds to Charter objective 1; Section 3.2.2 to Charter objective 2, task 2).

3.1 Determine whether Inspection Manual Chapter 9900 is consistent with the enforcement discretion policy

The review team compared the inspection manual guidance and the enforcement policy for consistency and found the two documents in close agreement. However, a few areas in the guidance needed to be re-written to more closely follow the criteria in the policy. In some cases, the guidance addressed areas not covered in the policy. For instance, the guidance allowed NRR to issue multiple plant common condition NOEDs even if the individual NOED requests should have been processed by the regions. The policy does not contain that provision.

RECOMMENDATION: Adopt the applicable portions of the revised Inspection Manual 9900 guidance in Appendix F to eliminate inconsistencies between the policy and the procedure.

3.1.1 Prepare a matrix classifying the types of causes that led to the licensees' NOED requests

The team reviewed the 90 NOEDs issued and assigned each NOED one of the following root causes:

- (1) equipment failure
- (2) additional time necessary to complete equipment repair
- (3) inadequate design
- (4) missed or will miss surveillance
- (5) inappropriate system testing, inspection, or alignment
- (6) technical specification wording or TS error
- (7) weather-related events
- (8) inadequate time to complete processing of licensing action
- (9) all other causes

Appendix E contains a matrix classifying the types of causes that led to the licensee requests. Figure 2 is a graphic presentation of the causes leading to the requests for enforcement discretion.

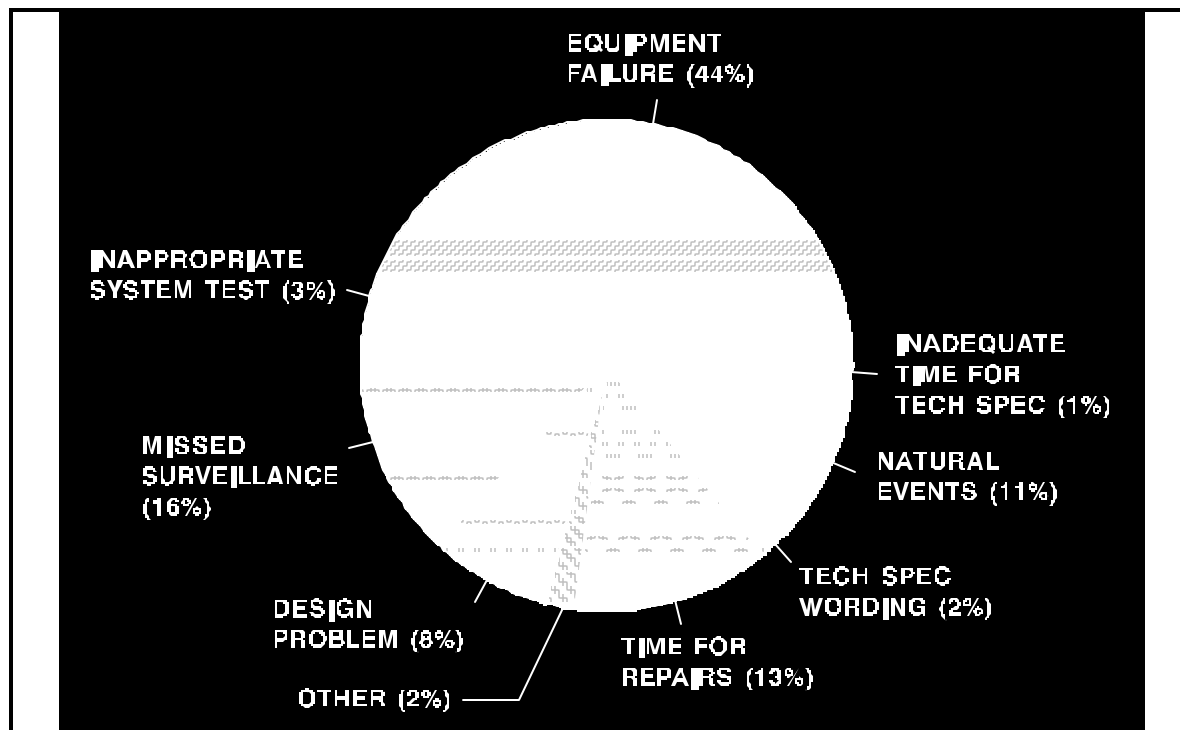


FIGURE 2 NOED ROOT CAUSES

The predominant root causes were equipment failure and missed surveillances, which correlate well with the fact that the regional offices issued 63 percent of the NOEDs and NRR issued 37 percent.

CONCLUSION: Although unanticipated equipment failures were the predominant root cause for requests for NOEDs, the root cause of the NOED was not always evident in the licensee's request or the staff's written response.

RECOMMENDATION: Each NOED approval letter should document the root cause for the NOED, and the NOED tracking system should record the root cause.

3.1.2 Determine if the NOEDs granted in the past should have been processed differently (e.g., exemption from regulation)

The following categories of NOEDs required additional review to determine if they had been processed correctly:

1. Relief/Exemption
2. Reactor Startup
3. Natural Event
4. Research/Permanently Shutdown Reactors
5. TS 3.0.3
6. General

3.1.2.1 RELIEF/EXEMPTION

Six of the 90 NOEDs were exercised to process exemptions or reliefs from regulations or codes and standards specifically implemented through the regulations. One of the six involved an NOED exercised while an exemption was being processed for the security program, and the other five dealt with similar actions associated with requirements from either Appendix J to 10 CFR Part 50 or the American Society of Mechanical Engineers (ASME) Code.

The team questioned whether NOEDs were appropriate for requirements of regulations or codes and standards specifically implemented through regulations. The team found that NRC managers involved in issuing NOEDs generally understood that the NOED process allowed NOEDs for regulations or codes and standards, which are also stated as TSs or other license conditions. This assumption is considered reasonable because the requirements were placed in the TS or other license conditions, and the types of issues considered were of similar safety importance to other issues contained in the TS. Deviations to regulations (*exemptions*) are afforded by the provisions of 10 CFR, such as 10 CFR 50.12, and relief from ASME Code requirements by the provisions of 10 CFR 50.55a(g)(6)(i), while the NOED process is based on 10 CFR 50.90 and 10 CFR 50.91 (TS amendments). Application of the NOED process to the granting of exemptions/reliefs is not clear in the policy.

CONCLUSION: NRC is adequately considering safety in processing enforcement discretion requests for issues involving an exemption from regulations or relief from codes and standards. For example, (1) all of the six referenced NOEDs were issued for regulations which were also reflected in a TS or other license condition; and, (2) the five NOEDs involving reactor operations issues included adequate technical justification to find that the described course of action involved minimal or no safety impact. However, the scope of the NOED

policy should be clarified regarding applicability to exemptions and reliefs to regulations cited in a plant's license.

RECOMMENDATION: Clarify the enforcement discretion policy and MC 9900 guidance, to allow NOEDs for circumstances involving the processing of exemption/relief requests.

If these types of cases can not be incorporated into the NOED process, develop an alternative process to handle emerging exemption/relief issues of short duration.

The guidance and possibly the policy should clarify that a NOED can be exercised for security and other programs referenced in the TS or license conditions when there is a direct nexus to reactor safety.

3.1.2.2 REACTOR STARTUP

Ten of the 11 NOEDs allowing licensees to start up plants that were clearly not in full conformance with the applicable operating license were not consistent with the policy. While the staff's determinations in such cases did not detract from safety, the higher standard required for plants in startup was not achieved.

The enforcement discretion policy establishes a higher standard for issuing an NOED for plants attempting to startup than for plants already operating. The Commission's policy statement defines three instances when the staff may exercise such discretion:

- (1) the equipment or system does not perform a safety function in the mode in which operation is to occur;
- (2) the safety function performed by the equipment or system is of only marginal safety benefit, provided remaining in the current mode increases the likelihood of an unnecessary plant transient; or
- (3) the TS or other license condition requires a test, inspection or system realignment that is inappropriate for the particular plant conditions, in that it does not provide a safety benefit, or may, in fact, be detrimental to safety in the particular plant condition.

Although the guidance was sufficient to implement the policy, the staff treated most startup NOED requests the same as those for power operations. The staff usually made a finding of marginal safety benefit (the first part of NOED startup criterion 2), but did not state why remaining in the current startup mode increased the likelihood of a transient (the second part of NOED startup criterion 2).

After reviewing the NOEDs exercised for startup conditions, the team decided that alternative criteria could be suggested that would provide a reasonable measure of safety while maintaining a higher standard for plants in startup. For example, an NOED could be justified if the licensee provided compensatory equipment that had not been credited in the accident analysis. The licensee would need to demonstrate that the alternative equipment provided at least an equivalent level of safety to that of the equipment discussed in the NOED.

The team considered the advisability of allowing the use of temporary compensatory measures, such as credit for operator action to compensate for the loss of equipment with marginal safety benefit. While it was recognized that there may be infrequent cases in the future where this type of consideration would be appropriate, the review team does not recommend adding the use of temporary compensatory measures to NOED startup criterion 2. With that extra degree of flexibility, we do not believe the startup criterion would be sufficiently limiting such that NOEDs exercised to allow startup would remain an infrequent event.

CONCLUSION: The NRC exercised enforcement discretion during startup conditions that did not explicitly meet the criteria for enforcement discretion as stated in the policy or MC 9900. However, exercising this enforcement discretion did not present an unsafe condition. The criteria for exercising enforcement discretion for plants in startup mode could be expanded to include cases in which a licensee has compensatory equipment not credited in the accident analysis. This compensatory equipment would ensure a comparable level of safety.

RECOMMENDATION: Retain a high standard for issuing an NOED for plants attempting to start up, but broaden the allowable circumstances to accommodate a licensee that has compensatory equipment. Revise the enforcement discretion policy and MC 9900 criteria for startup conditions as follows:

Enforcement discretion will likely be exercised less frequently for plants attempting to start up than for operating plants, because

delaying startup does not usually leave a plant in a condition in which it could experience undesirable transients. When enforcement discretion is exercised to avoid a startup delay, it is to be exercised for equipment or systems when the NRC staff has at least concluded that, notwithstanding the conditions of the license,

1. the equipment or system does not perform a safety function in the mode in which operation is to occur or
2. the safety function performed by the equipment or system is of marginal safety benefit and
 - a. compensatory equipment that is not credited in the accident analysis and can perform the same safety function is operable, or
 - b. remaining in the current mode increases the likelihood of an unnecessary plant transient; or,
3. The TS or other license conditions require a test, inspection, or system realignment that is inappropriate for the plant conditions, because it does not benefit safety or may decrease safety in the plant condition.

If such a change had been in effect during the evaluation period, it would still not have allowed for many of the NOEDs the staff issued for plants in startup mode during that period. However, broadening the startup criteria as above does increase the possibility that the staff would grant startup NOEDs more frequently than currently envisioned in the policy.

3.1.2.3 NATURAL EVENT

DISCUSSION: The team found 10 NOEDs exercised to reduce the possibility of operational problems in severe weather conditions where the need for enforcement discretion did not otherwise exist. The team thoroughly considered each weather-related NOED and concluded that the staff had stated a basis for exercising enforcement discretion in each case by finding minimal or no safety impact. The NOEDs issued for extreme weather predominantly involved suspending TS required surveillances in order to ensure maximum grid stability during periods of extreme power demand. The enforcement discretion policy does not address balancing the benefit of reactor safety with the benefit of maintaining a safe and dependable source of power.

CONCLUSION: The enforcement discretion policy does not address severe weather conditions where the need for enforcement discretion does not otherwise exist.

RECOMMENDATION: Clarify the enforcement discretion policy and MC 9900 guidance to state that, on rare occasions, natural events such as extreme weather which causes a power demand emergency or grid instability, the staff may exercise enforcement discretion to promote the overall public interest. This involves balancing actions which have minimum or no safety impact with the overall safety benefit of continued reactor operation.

While the team is not recommending that Commission notification be required for the above exercise of discretion, we note that such notification is already required in the Enforcement Policy for other situations that require a similar balancing of concerns.

3.1.2.4 RESEARCH/PERMANENTLY SHUTDOWN REACTORS

The team found one NOED issued for a research reactor. Putting aside the policy issue of whether research and test reactors are covered by the NOED process, the NOED issued was inappropriate, in that it was issued to allow conduct of a special test which is covered by 10 CFR 50.59 and not the NOED policy.

The NOED process is based on Enforcement Policy provisions that do not specifically exclude its use for research and test reactors. However, the criteria of the policy were not written to allow consideration of such licensees. Nevertheless, the continued operation of such a facility might warrant enforcement discretion for reasons of public health and safety or

reactor safety. For example, the larger issue of public health and safety might justify continuing to operate the reactor during the final stages of a critical medical treatment or experiment. Consideration of reactor safety for such licensees could in certain circumstances fall under the existing criteria of a test, surveillance or system realignment inappropriate for the particular plant conditions.

The team was made aware that in the past, TWOCs were used for addressing TS and license issues at permanently shutdown power reactors, while a requested license amendment was being processed. Since the NOED policy and procedure have been in place, no NOEDs have been issued for such plants. The policy and procedure do not cover such situations, as they discuss shutdown reactors only in terms of minimizing shutdown risk, which is not normally the issue for these plants. Nevertheless, the need for NOEDs, or some other similar process, for permanently shutdown power reactors will likely occur in the future.

CONCLUSION: The NOED policy should be modified to address the hazards associated with research and test reactors and thus should explicitly include these licensees in its scope. However, the criteria for exercising such discretion should be very restrictive because it would be done under only very limited circumstances. The need for enforcement discretion for permanently shutdown power reactors will likely occur in the future.

RECOMMENDATION: Clarify the enforcement discretion policy and MC 9900 guidance to state that enforcement discretion may be warranted for continued operation of a research reactor under rare circumstances. Appendix F includes the proposed change to MC 9900 guidance.

The policy and procedure should be modified to allow the use of NOEDs for permanently shutdown power reactor licensees awaiting license changes necessitated by that condition. Alternatively, another policy should be developed to address enforcement discretion for these largely economic issues that have no impact on reactor safety. In either case, this discretion should only be exercised in situations when a previously submitted license amendment/exemption is desired before processing by the staff could be completed.

3.1.2.5 TS 3.0.3

Licensees have requested discretion upon discovering a problem shortly (possibly minutes) before an allowed outage time is due to expire. The staff usually did not have time to assemble the necessary personnel or receive the necessary telecopies from the licensee and handled such cases in one of two ways. If the AOT expired, the staff may have directed the licensee to proceed with the required action, usually to start the reactor shutdown, and continue until the NOED was issued by the staff. However, the staff may have allowed the licensee to delay acting until the staff had time to fully consider the request. The latter and rare case is referred to as "holding the LCO time clock in abeyance" or "stopping the LCO time clock" and is done with NRC agreement. The presumption is that the NRC will ultimately exercise the necessary enforcement discretion, and that maintaining the plant in a stable configuration is best to maintain reactor safety.

The policy does not address the practice of allowing licensees to not comply with TS requirements once an AOT has expired, while the staff is considering a discretion request. Statements made in the NOED letters could imply that the staff did not make a safety finding until after the AOT expired. This is inappropriate.

CONCLUSION: In the documents for 2 of the 90 NOEDs, the staff appeared to not enforce compliance with TS requirements once an AOT had expired, if the staff was considering an enforcement discretion request. The enforcement discretion policy and implementation procedures are silent on this action.

RECOMMENDATION: Clarify MC 9900 guidance to state that the NRC staff must ensure compliance with the TS requirements if it does not verbally issue enforcement discretion before the AOT expires. If compliance requires the licensee to take substantial actions, such as beginning a plant shutdown that may not be in the best interest of safety, then the staff should act quickly on the request for enforcement discretion. However, the licensee must give a sufficient basis for the staff to issue enforcement discretion to allow continued operation beyond AOT expiration.

3.1.2.6 GENERAL

NRR issued several NOEDs for brief, one-time issues which by the procedure should have been issued by the respective region. However, although this practice did not follow policy and procedure, the technical issues were properly addressed and the region concurred in the action. NRR took responsibility for issuing these NOEDs because the region concluded that the

office with the most experience/expertise in a given area should have the lead and sign the document. NRR also handled such NOED requests involving multiple plant common condition NOEDs, which were allowed by the NOED procedure but not by the policy.

While the NRC and the industry discussed short duration enforcement discretion issues at the four regional Operability/Degraded Equipment workshops, three of these took place while the TWOC process was still in effect. Most submittals under the NOED policy were of high quality because industry understood the publicly available Inspection Manual guidance and had years of experience with the TWOC process. However, there has never been any focused discussions with the industry on the NOED process and the types of problems that may arise when an NOED is being considered. Additionally, the team did not find any staff-wide training on the NOED policy, procedures, or problems encountered in implementing them.

The review team found a few minor administrative problems with the NOEDs reviewed. A number of NOEDs were issued without the sequential number required by the procedure, and others were issued without clear indication that the required cross-office concurrence was first obtained.

CONCLUSION: The staff processes most NOEDs in accordance with policy and procedural guidance. The policy should allow NRR (as it is already permitted in the procedure) to handle individual plant NOED requests involving common conditions and thus review the affected licensees' bases in a single coordinated effort rather than having each involved region consider the bases of its licensees separately. Having NRR handle those NOEDs deferred by the region does not raise any technical or safety concerns.

RECOMMENDATIONS: Clarify the MC 9900 guidance to state that NRR should issue multiple plant common condition NOEDs which are short duration, one-time only requests from individual licensees (normally issued by the region). NRR may issue NOEDs when the region has concluded that NRR has the most experience/expertise in the area and has requested NRR to take the lead.

The NRC must continue dialogue with licensees to prevent inappropriate NOED requests or inadequate justification. Covering the enforcement discretion policy in a workshop for those both inside and outside the NRC would be beneficial.

3.1.3 Determine the adequacy of the staff's documentation of the safety rationale

The staff's documentation of the safety rationale was adequate for most cases involving enforcement discretion allowing a reactor to remain at power. However, in one case the support for the discretion was provided but the reason given for issuing it was mis-stated. In contrast, the staff did not state a basis for many of the NOEDs to continue startup. While in such cases, the staff made the safety argument about the affected equipment's minimal safety impact, it failed to make the additional finding required in such cases that remaining in the current mode or condition increased the likelihood of an unnecessary transient.

In several of the staff's letters, it relied too heavily on references to the licensee's letter instead of more thoroughly summarizing the basis in the NOED itself. Many of the NRC's letters discussed the arguments from the licensee's letter without stating which was the basis for the NRC's decision. In some cases, NRC apparently accepted all of the licensee arguments as valid when in fact they may not have been. For example, licensees routinely make arguments such as providing power to the customer or avoidance of even a minimal personnel radiation exposure being benefits, neither of which relate directly to the reactor safety based criteria of the NOED policy.

The time lines in many of the NOEDs were incomplete and confusing. For example, the staff frequently did not state the length of the applicable Allowed Outage Time (AOT), when the AOT began or was due to expire, when discretion was verbally requested, when it was verbally issued, and sometimes began the period of discretion from the beginning of the AOT rather than the its end.

CONCLUSIONS: Most NOEDs included adequate documentation of the safety rationale. The staff, for reactors being started up, justified and documented well the finding of "minimum or no safety impact"; however, the majority of startup NOEDs did not contain the higher level of justification required by policy and procedure.

RECOMMENDATION: Summarize the specific basis for the NRC decision in the letter without referring to the licensee's letter except for details and specific licensee arguments that were not relied on. Rewrite the example letter in the MC 9900 guidance to show how the licensee safety basis should be

stated, evaluated, and documented and the sequence of events stated. (See Appendix F).

3.1.4 Determine if the duration for which enforcement discretions are granted is excessive. State rationale for accepting the current practice or recommend changes

The review team examined the length of time for which NOEDs were issued and then, where possible, determined from inspection reports, licensing actions and plant status reports, the actual length of time that the NOED was in effect. The team found that, in general, the duration for which NOEDs were issued was acceptable. In fact, there were examples where the NRC exercised periods of enforcement discretion shorter than requested by the licensees. In the case of NRR NOEDs, the length of the period for which NRR allowed discretion depended on how quickly the followup license amendment was issued. While most amendments were issued in days or weeks, a few amendments were not issued for months.

Although the staff stated the maximum period for the enforcement discretion in the NOED letter, exactly how much of the allotted time was used in many of the cases is unknown. In some cases where the discretion had already ended by the time the NRC issued its letter, the letter stated the end time. Figure 3 shows the time, in days, that it took NRR to issue the licensing action associated with the NOED. The policy and guidance state an NRR NOED duration of time sufficient to process an emergency or exigent license amendment, which generally should be no more than 3 weeks. As shown in Figure 3, 56 percent of the licensing actions were issued within 3 weeks.

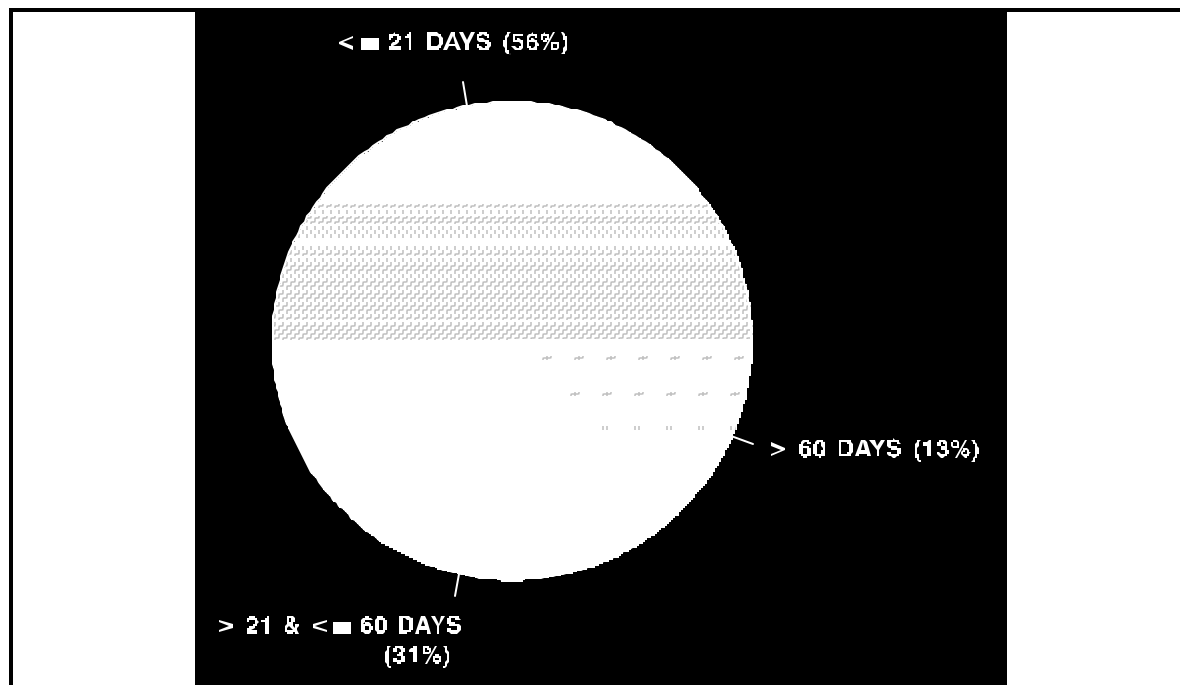


FIGURE 3 LICENSING ACTION TIMELINESS

Figure 4 displays the distribution of licensing actions issued by NRR. As shown, 53 percent of the licensing actions were issued for emergency or exigent license amendments. Normal amendment or relief/exemption processing can be expected to take substantially longer than 3 weeks, and the use of these types of licensing actions naturally increased the NOED duration. (Note: in some cases an NRR issued NOED had no followup licensing action. For example, the plant shutdown or corrected the root cause precipitating an end to the NOED before the licensing action could be issued.)

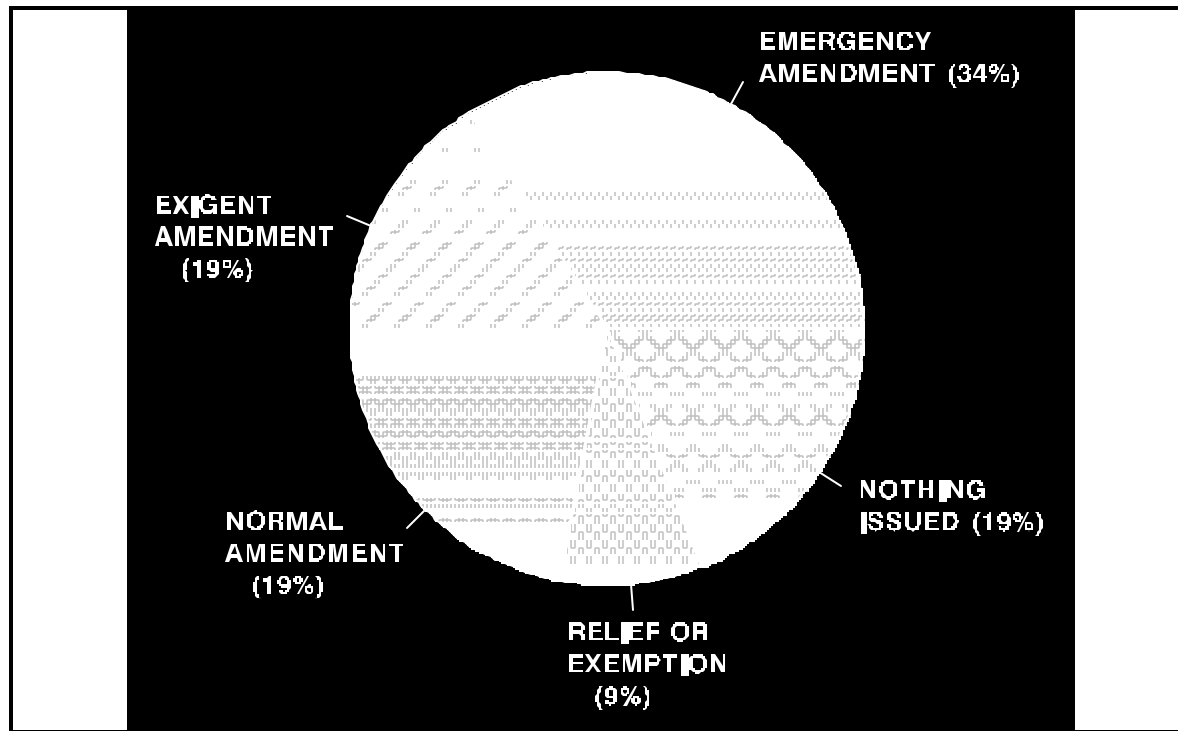


FIGURE 4 LICENSING ACTION (BY TYPE)

The team also evaluated the quantity of NOEDs exercised and their distribution. While the small sample size makes generalizations difficult, the team found that NOEDs were exercised over the evaluation period at a rate about the same as the historical average when the years of TWOC issuance are included. The team found no apparent correlation between plant operational performance and issuing of NOEDs (Appendix G). NOEDs were distributed evenly across the regions when considered both by reactor and by site. The regions issued more NOEDs than NRR, as would be expected since equipment failures are the primary reason for seeking an NOED. While 22 sites did not receive NOEDs

in this period, many sites received multiple NOEDs during the evaluation period (1 dual unit site with 6, 1 triple unit site with 5, and 3 dual unit sites and one single unit site with 4 each).

CONCLUSIONS: Overall, the length of time for which NOEDs are in effect was acceptable. In most cases the regions complied with the Inspection Manual guidance, which states a maximum length for such NOEDs. However, NRR took too long in issuing some licensing actions that ended the discretion period, because either the action was treated as a normal license amendment or in some cases the need for an exemption or relief took additional time. While it would be difficult to specify a maximum length of time for NRR, the policy clearly implies that all such amendments should be issued within several weeks rather than months. However, the NOED may involve an issue tied to a broader amendment processed as a whole and taking a longer time to be issued than an amendment involving the discretion issue alone.

RECOMMENDATION: To ensure that all NOEDs have been documented as closed out, NRR and the regions should verify the accuracy of information in each NOED request to verify that the minimum time period is requested for enforcement discretion. NRR should minimize the time for which the enforcement discretion is in effect by issuing licensing actions which involve enforcement discretion in a timely manner (normally within 3 weeks). Only in special circumstances should NRR take longer than 60 days to close out an action. The closeout information (IR number, EA number, Amendment number, and dates) should be put into the NOED tracking system.

3.2 Determine if the staff is pursuing enforcement actions for the root causes of violations for which enforcement discretions are sought and recommend improvements needed

3.2.1 Determine if the staff adequately reviews the accuracy of the licensee's rationale for NOED requests

The team could not directly evaluate this issue because the staff did not discuss such reviews in the NOED letters and was not consistent in doing the followup actions. However, the team found evidence that the staff verified certain licensee assertions before issuing an NOED and verified others while closing out the NOED.

The resident inspector and the project manager usually participate in discussions with the licensee before the NOED is exercised. This is done in

part to ensure that the NRC managers issuing the NOED hear an independent perspective on the licensee's assertions from the two NRC personnel most familiar with the plant prior to issuing the NOED.

Only one region had a procedure describing the type of followup actions to closeout an NOED. However, a case involving a regional NOED in another region indicated other regions also verify licensee assertions. The region determined that what the licensee had told the NRC verbally was in fact not being fully implemented. The region revised the NOED to reflect what was being implemented and sent the licensee a strongly worded letter about the issue.

CONCLUSIONS: Having the resident inspector and the project manager participate at the beginning will ensure an adequate evaluation of the major assertions licensees are making verbally and in writing. However, the staff did not always clearly document actions to follow up on the details of licensees' assertions. In at least one case, a licensee commitment was not properly implemented and was not detected for some time. However, the fact that enforcement action is being taken, as discussed in Sections 3.2.3 and 3.2.4 below, demonstrates that the staff verified licensee commitments in many cases.

RECOMMENDATION: Clarify the MC 9900 guidance to state that the regions should, in closing out the inspection for the NOED, verify the accuracy of licensee information upon which the NOED was based, and as recommended in Sections 3.2.3/4 below, document results in an inspection report and enter appropriate data into the NOED tracking system.

3.2.2 Determine if the staff routinely ensures that the root causes warrant the requests for the exercise of enforcement discretion, and that licensees do not abuse the process

The team reviewed the final disposition of NOEDs. During the evaluation period, the staff began processing 100 NOEDs, of which 90 were exercised, 8 were not needed (e.g., a forced shutdown for another problem intervened), 2 were withdrawn (would likely have been denied), and 0 formally denied. All NOEDs were submitted for appropriate causes except for the research reactor NOED and the security program NOED.

Each issued NOED (except for the NOED issued for the security program) had an adequate technical basis in reactor safety. Although most NOEDs submitted are

given enforcement discretion by the staff, this should not create a false perception that NOEDs are easily obtained. Licensees have a fairly good understanding of what the NRC staff will accept. Thus, they will only devote the resources to those discretion requests that would likely be exercised. Frequently, the licensee staff and the NRC will discuss a contemplated NOED before it is submitted, and the licensee may not submit it if the enforcement discretion they would propose would not likely be exercised. Unless the discussion lasted a long time, the staff would not record it in the tracking system as either a withdrawal or a denial and the percentage would continue to favor those NOEDs issued. The NRR projects staff attempts to record at least the time spent on this type of issue by informally having project managers report when they spend more than four hours on such an issue. The regions also record some of the time spent on NOEDs but lack formal guidance.

The NOED distribution data did not indicate problems with the program or its implementation and did not show any obvious bias based on the utility's performance in the requesting or issuing of NOEDs. However, the high number of NOEDs issued to a few sites is a concern when the words of the Enforcement Policy are considered: "Finally, it is expected that the NRC staff will exercise enforcement discretion in this area infrequently." In three instances the staff demonstrated adequate technical justification, but may not have met the intent of the Enforcement Policy. In two cases, the staff issued two startup NOEDs for the same plant startup, although these are supposed to be an exception among these infrequently issued acts of discretion. In the third case, in 1991, the staff issued a TWOC for which the licensee committed to take followup action; yet in 1994, the licensee again requested and received the discretion because it had failed to properly act on the 1991 TWOC.

The team did not evaluate the data by NSSS and did not consider whether the plant had custom or standard TS because (1) the past evaluations did not show any evident trends and (2) evaluations by a factor such as NSSS or TS type might reveal an inherent reason such plants are more likely to seek NOEDs, but these factors would not disclose problems with the NOED procedure or its implementation.

The staff issued NOEDs at the average rate of 1.0 NOED per site-year (0.7 NOED per reactor-year), which appears to meet the NOED policy expectation for frequency of issuance. This rate is similar to the rate for the predecessor to NOEDs, TWOCs. To put the number of NOED requests (100) in perspective, the team noted that the staff received 2268 requests for licensing actions during

the same 16 month period, demonstrating the fact that NOEDs comprise a very small fraction of staff actions. The changes recommended herein to the NOED policy and procedure should not significantly change the historic rate of NOED/TWOC issuance.

CONCLUSION: The staff is not abusing the enforcement discretion policy by allowing licensees unjustified discretion. The staff's safety rationale for issuing NOEDs is sound and as long as the staff reviews requests in accordance with the policy and procedure, licensees can not abuse the process. Although the staff issued three NOEDs that did not meet the intent of the policy regarding infrequent requests and nonrecurring problems, the overall frequency of the exercise of enforcement discretion fulfilled the stated expectation in the Enforcement Policy.

RECOMMENDATION: Clarify the MC 9900 guidance to ensure that the root cause is evaluated by the licensee and the staff (to include relevant similar historical events) and is documented in the NOED letter and in the NOED tracking system. Require NRR to open a TAC for any NOED action using four (4) hours or more of total staff time. Update WISP to include a unique two-letter code for NOEDs.

- 3.2.3 Determine if the staff evaluates the need for and takes enforcement actions for the root causes that result in the violations
- 3.2.4 Determine if the staff ensures that the licensees' procedures and programs are evaluated to ensure that the root causes that resulted in NOEDs have been eliminated

The team reviewed the root causes for each issued NOED as discussed in the NOEDs and where available, the licensees' letters. The team listed those NOEDs with root causes that appeared to be violations. As shown in Figure 5, on the following page, the list included approximately 21 percent of all NOEDs issued. The team then compared that list to the list compiled to answer a question from Senator Lieberman to the staff (question 16(d)). The team requested information from the regions for those NOED root causes that appeared to warrant enforcement and were not included on the answer to question 16(d). The regions informed the team of five NOEDs for which enforcement had been taken but had not been listed in the response to question 16(d). This omission reinforces the need for a system to adequately track NOEDs to closure. The team found only three examples of minor violations

where enforcement action had apparently not been properly taken. All three of the violations appeared to meet the criteria for non-cited violations (NCV).

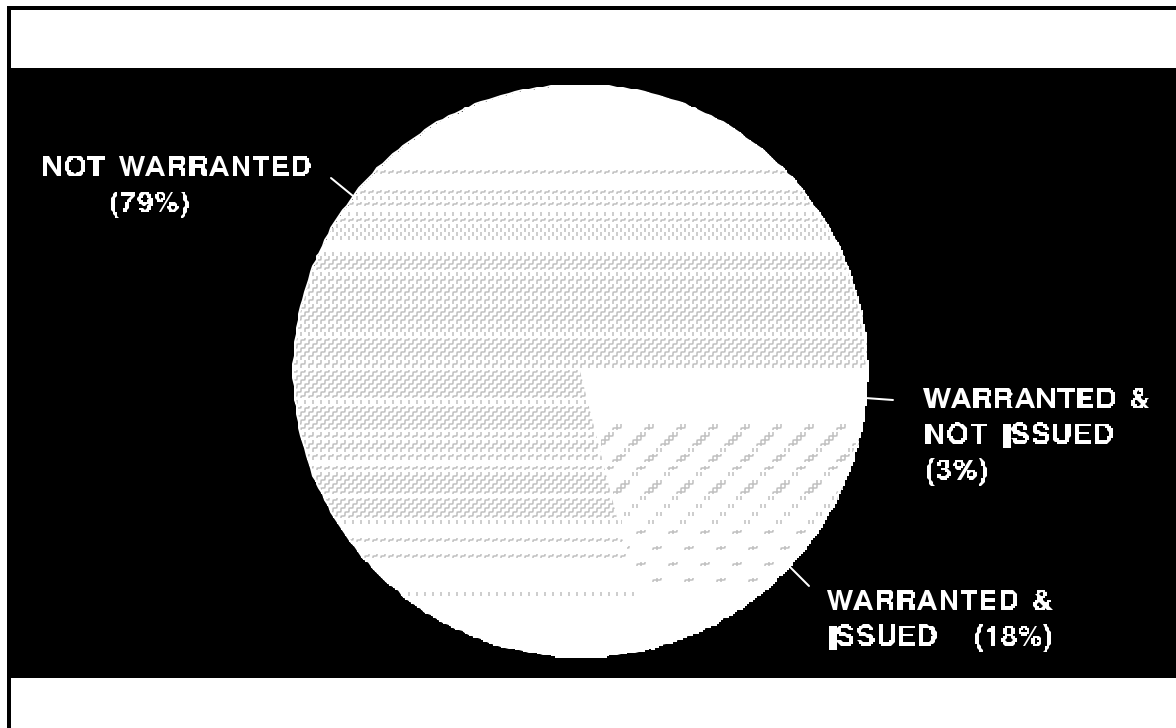


FIGURE 5 ENFORCEMENT ACTION STATUS

CONCLUSION: The staff properly took enforcement action for most NOEDs where enforcement was warranted. However, the fact that enforcement action was taken for the root cause of a particular NOED was not always easily verifiable. The team found only three cases of minor violations for which the staff did not document the reason enforcement action was not taken. All three of these cases appeared to have met the NCV criteria.

RECOMMENDATION: Clarify the MC 9900 guidance to ensure each NOED is considered for enforcement action and the result of the enforcement is documented in a routine monthly inspection report. Reference the NOED number in any enforcement action and enter the enforcement information into the NOED tracking system.

- 3.3 Review the Office of Enforcement draft enforcement guidance memorandum (EGM) for guidance on NOEDs [regarding only tracking and closeout] and review comments on EGM provided by the regions. With the results of the review to date, draft NRR response to EGM for the signature of the Associate Director for Projects, within five working days after all Regional Comments have been submitted.

The review team submitted a draft EGM response for the signature of the Associate Director for Projects, within 5 work days of receiving comments from each region.

CONCLUSION: See Appendix E for comments on the draft EGM and regional comments on that document.

RECOMMENDATION: Implement a common NRR and regional NOED Tracking System accessible by the LAN. Appendix E contains information recommended for the NOED tracking system database.

- 3.4 Recommend improvements in the NOED process.

- 3.4.1 Evaluate any role for public participation. Consider the possibility of noticing NOEDs after issuance. Recommend procedures for public noticing such as by news media or bulletin board systems

The team considered many options for informing the public before an NOED is issued, including publishing *Federal Register* notices after issuance (*post-noticing*), issuing news releases, publishing them in Office of Enforcement's quarterly summary of significant enforcement actions (NUREG-0940), and expanding the information available on the open enforcement conference telephone recording (and electronic bulletin board when available) to include a list of recently issued NOEDs.

CONCLUSION: The NOED process does not lend itself to public participation before the NOED is issued. However, the public would benefit from greater access to information about NOEDs that have been issued. A rapid notification such as a news release or inclusion of the NOEDs in the telephone/bulletin board information followed by a quarterly compilation in NUREG-0940 would be a good approach. Post-noticing in the *Federal Register* would not be effective because such publication is normally associated with an invitation to comment, which means little for most NOEDs which would already be closed at the time of publication.

However, noticing an NOED that may be open for longer than about 14 days (two weeks) will enable the members of the public to comment by telephone or facsimile while the NOED is still in effect. Finally, the team found that some license amendments associated with an NOED specifically disclose in the notice that it is associated with an NOED, while others do not.

RECOMMENDATION: Formally and promptly notify the public of the issuance of all NOEDs. Publish a notice in the *Federal Register* for each NOED that involves license amendments or will be in effect for 14 days or longer. On an interim basis to evaluate the public benefit, consider issuing a press release or establish an electronic bulletin board or recorded telephone message for other NOEDs that are exercised. Collect all NOEDs and periodically publish them in NUREG-0940 along with other enforcement actions.

3.4.2 Determine the amount of oversight given the enforcement discretion process. Evaluate the need for audits to ensure that the guidance is being adhered to.

Oversight of the NOED program in NRR is limited to the responsibility for issuing Inspection Manual guidance and maintaining a tracking system for the documentation related to each NOED. The Office of Enforcement assumed oversight when field guidance was needed rapidly for NOEDs (the temporary procedure issued after the Enforcement Policy approval, for instance). In the regions the oversight varies from a tracking and followup system in one region to elements of one or both of those functions in the other regions.

CONCLUSION: The various aspects of the program have been implemented with varying consistency across the regions and within NRR because no single office has overall oversight responsibility for the NOED program.

RECOMMENDATION: Assign responsibility for NOED oversight to a senior manager not involved in the daily tasks of the NOED program; possibly a manager in NRR/PMAS or OE. (The team recognizes that there may be resource and/or expertise difficulties with both groups proposed. However, the team concluded that independence from the process was a more significant consideration). Assign a single office to issue all guidance on the NOED program. Assign responsibility for successfully implementing the NOED program to the Assistant Directors of Projects in NRR and the Division Directors of Reactor Projects in the regions with direct accountability in their performance appraisals. Have the NOED oversight manager prepare an annual report that evaluates the

implementation of the NOED program for distribution to EDO, NRR, OE, and regional senior managers.

3.5 Develop and recommend a process for a comprehensive NOED tracking system which ensures that documentation of the licensee's and the staff's activities on all requests for NOEDs is complete and readily retrievable.

3.5.1 Verify the accuracy of the existing database on NOEDs since the issuance of the Enforcement Policy on March 17, 1993

The team reviewed the data for the NOEDs required in the existing database and found it very accurate. Inaccuracies were annotated on marked up data sheets so that the errors could be corrected. However, few NOED records in the NRR database were complete because the database administrator was not receiving enough information on the closeout of the NOEDs, such as inspection report followup and license amendment issuance.

Five offices (NRR and the four regions) implement the NOED program. Program implementation guidance comes from two sources, NRR through the Inspection Manual and the Office of Enforcement through EGMS. By the Inspection Manual procedure, a Technical Assistant (TA) in NRR projects is responsible for the database but the TA relies on the project managers and the regional personnel to provide the information to keep the database current. That has not always been occurring for a number of reasons.

CONCLUSION: The Inspection Manual guidance on following up on NOEDs has not been effectively implemented. The guidance concerning how and when the data should get to the TA was inadequate. While two offices have been issuing guidance on NOEDs, neither has been overseeing the program as needed to find and correct these problems.

RECOMMENDATIONS: Update the NOED database with the team findings and make the recommended changes to the MC 9900 guidance for the tracking system discussed in paragraphs 3.5.2 and 3.5.3.

3.5.2 Make recommendations for expanding the database, and determine if all NOED correspondence should be tracked in a single database.

- 3.5.3 Use the categories of NOEDs identified from item (1) of the Objectives to track by category and incorporate into the revised NOED tracking system.

The database lacks various pieces of information and should be expanded to include data fields for topics such as (1) whether the NOED was requested verbally, issued verbally, or both; (2) the length of the period of discretion; and (3) the applicable license amendment number. Additionally, the root cause field should be changed from fill-in-the blank to a multiple choice. Appendix I is a complete list of the fields in the proposed expanded database.

CONCLUSION: The existing NOED database could, with a few additions and modifications, track the whole NOED process. Although a database of NOEDs may be sufficient, a paper file for each NOED (similar to the OE Enforcement Action (EA) files) may assist in answering questions on individual NOEDs. In the short term, the regions and NRR will have to have their separate databases. In the longer term, a consolidated database that could be shared by the regions and NRR would ensure that all data fields in the database are kept up to date.

RECOMMENDATIONS

- (1) Revise the database to include all of the information in Appendix I.
- (2) Input the data corrections found by the review team into the NOED tracking system database.
- (3) Update the database for at least all NOEDs issued since March 17, 1993, to supply all missing information in the revised database.
- (4) Make a revision of the NRR database available to the regional offices for the short term.
- (5) Implement a LAN-based version of the NOED tracking system in the long term.
- (6) Maintain a hard copy file on each NOED similar to the OE enforcement action files.

- 3.6 Find any weaknesses in the policy and propose improvements.

Appendix J is a summary of the recommendations made herein to improve the Inspection Manual.

Modifying the NOED process as recommended herein will reach the proper balance between the safety and efficiency goals of the NRC's Principles of Good Regulation. Although safety is the principal concern, the utility and ratepayers will benefit economically from improvements to the enforcement discretion process so that NOEDs are issued for instances of little or no effect on safety. The weather-related and the possible infrequent research/test reactor NOEDs discussed herein are the only areas where a larger public safety issue should be included along with the consideration of reactor safety. NRC should tightly control the conditions under which it exercises that type of discretion so that public health and safety remains the clear basis for the action.

- 3.7 Include as inputs the findings, conclusions, and recommendations from the ongoing OIG review of the enforcement discretion process which is expected to be completed near the end of July 1994.

The Office of the Inspector General performed an audit review of the NRC's implementation of the NOED policy and procedures. At the time of this report the OIG had not yet published its audit report.

APPENDICES

APPENDIX A

10 CFR PART 2, APPENDIX C, SECTION VII.C

EXERCISE OF ENFORCEMENT DISCRETION

FOR AN OPERATING FACILITY

10 CFR Part 2, Appendix C, Section VII

C. Exercise of Discretion for an Operating Facility

On occasion, circumstances may arise where a licensee's compliance with a Technical Specification (TS) Limiting Condition for Operation or with other license conditions would involve an unnecessary plant transient or performance of testing, inspection, or system realignment that is inappropriate with the specific plant conditions, or unnecessary delays in plant startup without a corresponding health and safety benefit. In these circumstances, the NRC staff may choose not to enforce the applicable TS or other license condition. This enforcement discretion will only be exercised if the NRC staff is clearly satisfied that the action is consistent with protecting the public health and safety. A licensee seeking the exercise of enforcement discretion must provide a written justification, or in circumstances where good cause is shown, oral justification followed as soon as possible by written justification, which documents the safety basis for the request and provides whatever other information the NRC staff deems necessary in making a decision on whether or not to exercise enforcement discretion.

The appropriate Regional Administrator, or his designee, may exercise discretion where the noncompliance is temporary and nonrecurring when an amendment is not practical. The Director, Office of Nuclear Reactor Regulation, or his designee, may exercise discretion if the expected noncompliance will occur during the brief period of time it requires the NRC staff to process an emergency or exigent license amendment under the provisions of 10 CFR 50.91(a)(5) or (6). The person exercising enforcement discretion will document the decision.

For an operating plant, this exercise of enforcement discretion is intended to minimize the potential safety consequences of unnecessary plant transients with the accompanying operational risks and impacts or to eliminate testing, inspection, or system realignment which is inappropriate for the particular plant conditions. For plants in a shutdown condition, exercising enforcement discretion is intended to reduce shutdown risk by, again, avoiding testing, inspection or system realignment which is inappropriate for the particular plant conditions, in that, it does not provide a safety benefit or may, in fact, be detrimental to safety in the particular plant condition. Exercising enforcement discretion for plants attempting to startup is less likely than exercising it for an operating plant, as simply delaying startup

does not usually leave the plant in a condition in which it could experience undesirable transients. In such cases, the Commission would expect that discretion would be exercised with respect to equipment or systems only when it has at least concluded that, notwithstanding the conditions of the license: (1) The equipment or system does not perform a safety function in the mode in which operation is to occur; (2) the safety function performed by the equipment or system is of only marginal safety benefit, provided remaining in the current mode increases the likelihood of an unnecessary plant transient; or (3) the TS or other license condition requires a test, inspection or system realignment that is inappropriate for the particular plant conditions, in that it does not provide a safety benefit, or may, in fact, be detrimental to safety in the particular plant condition.

The decision to exercise enforcement discretion does not change the fact that a violation will occur nor does it imply that enforcement discretion is being exercised for any violation that may have led to the violation at issue. In each case where the NRC staff has chosen to exercise enforcement discretion, enforcement action will normally be taken for the root causes, to the extent violations were involved, that led to the noncompliance for which enforcement discretion was used. The enforcement action is intended to emphasize that licensees should not rely on the NRC's authority to exercise enforcement discretion as a routine substitute for compliance or for requesting a license amendment.

Finally, it is expected that the NRC staff will exercise enforcement discretion in this area infrequently. Although a plant must shut down, refueling activities may be suspended, or plant startup may be delayed, absent the exercise of enforcement discretion, the NRC staff is under no obligation to take such a step merely because it has been requested. The decision to forego enforcement is discretionary. Where enforcement discretion is to be exercised, it is to be exercised only if the NRC staff is clearly satisfied that such action is warranted from a health and safety perspective.

APPENDIX B

NRC INSPECTION MANUAL, PART 9900: 10 CFR GUIDANCE

10 CFR PART 2, APPENDIX C, ENFORCEMENT DISCRETION

NRC INSPECTION MANUAL

PART 9900: 10 CFR GUIDANCE

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10 CFR PART 2 APPENDIX C ENFORCEMENT DISCRETION

A. PURPOSE

To guide staff in the Regional Offices and staff in the Office of Nuclear Reactor Regulation (NRR) on the process for the NRC to exercise enforcement discretion with regard to limiting conditions for operation (LCO) in Technical Specifications (TS) or other license conditions. The exercise of enforcement discretion may be warranted to (1) avoid unnecessary plant transients, (2) reduce operational and shutdown risk, and (3) avoid unnecessary delays in plant startup. In each case, the exercise of enforcement discretion is appropriate only when it is temporary and nonrecurring and when the course of action involves minimal or no safety impact and the NRC staff is clearly satisfied that the exercise of discretion is consistent with protecting the public health and safety.

1. In cases where the need for an exercise of enforcement discretion is nonrecurring and of such short duration that a license amendment could not be issued before the need no longer exists, making it impractical to amend the license, the Regions have the lead to exercise enforcement discretion with regard to compliance with Technical Specifications or other license conditions. However, where the need for an exercise of enforcement discretion is expected to exceed the time required to process and issue an emergency license amendment under the provisions of 10 CFR 50.91 (a) (5), such an amendment should be issued, and NRR would take the lead. NRR shall make the determination of whether or not issuance of an emergency license amendment is practical before the need for an exercise of enforcement discretion is expected to come to an end.
2. In cases that involve an amendment to the license, NRR has the lead to exercise enforcement discretion with regard to compliance with TSs or other license conditions. NRR also has the lead to exercise enforcement discretion with regard to issues of a generic nature, whether or not an amendment to the license is warranted.

In both cases, the operating license will be violated, but the NRC is exercising its discretion not to enforce compliance with the operating license for a specified time period. This guidance supersedes NRC's previous practice of

granting temporary waivers of compliance with regard to TS LCOs or other license conditions. This guidance implements the recent revisions to Section VII. C of the Enforcement Policy (10 CFR Part 2, Appendix C), published in the Federal Register on March 17, 1993 (58 FR 14308).

B. BACKGROUND

A licensee may depart from its TSs in an emergency, pursuant to the provisions of 10 CFR 50.54(x), without prior NRC approval, when it must act immediately to protect the public health and safety. However, situations occur occasionally which are not addressed by the provisions of 10 CFR 50.54(x), and for which the NRC's exercise of enforcement discretion may be appropriate. Provided that the licensee has not abused the emergency provisions of 10 CFR 50.91 by failing to apply for an amendment in a timely manner, it is appropriate that the NRC have a procedure for expeditious notice to a licensee of NRC's intentions to exercise enforcement discretion under limited circumstances. Actions taken by licensee employees pursuant to such an exercise of discretion will not result in enforcement against the individuals involved.

For an operating plant, the exercise of enforcement discretion is intended to (1) minimize the potential safety consequences of unnecessary plant transients and the accompanying operational risks and impacts or (2) eliminate testing, inspection, or system realignment that is inappropriate for the particular plant conditions. For plants in a shutdown condition, exercising enforcement discretion is intended to minimize shutdown risk by avoiding testing, inspection, or system realignment that is inappropriate for the particular plant conditions, because it does not provide an overall safety benefit, or may, in fact, be detrimental to safety in the particular plant condition.

The exercise of enforcement discretion for plants attempting to start up is expected to occur less often than for operating plants, because delaying startup does not usually leave a plant in a condition in which it could experience undesirable transients. When enforcement discretion is exercised to avoid a startup delay, it is to be exercised with respect to equipment or systems when the NRC staff has at least concluded that, notwithstanding the conditions of the license:

1. The equipment or system does not perform a safety function in the mode in which operation is to occur; or,
2. The safety function performed by the equipment or system is of only marginal safety benefit, if remaining in the current mode increases the likelihood of an unnecessary plant transient; or,
3. The TS or other license conditions require a test, inspection, or system realignment that is inappropriate for the particular plant conditions, because it does not provide a safety benefit, or may, in fact, be detrimental to safety in the particular plant condition.

The NRC staff is expected to exercise enforcement discretion infrequently. Although requirements may dictate that a plant must be shut down, refueling activities suspended, or plant startup delayed absent the exercise of enforcement discretion, the NRC staff is under no obligation to take such a step merely because the licensee has requested it. The decision to forego enforcement action is discretionary. Where enforcement discretion is to be exercised, it is to be exercised only if the NRC staff is clearly satisfied that such action is warranted from a health and safety standpoint. Enforcement discretion must be exercised on a case-by-case basis, considering the individual plant circumstances.

If the NRC decides not to exercise enforcement discretion, the licensee must take the action required by the Tss (except as stated in 10 CFR 50.54(x)). However, the NRC staff and the licensee should be sensitive to special circumstances in which literal compliance with the TSs may not be in the best interest of the public health and safety. Normally in such circumstances, the NRC should grant a request for the exercise of enforcement discretion to allow for the conduct of an orderly shutdown, when a shutdown is required. Similarly, the NRC should grant a request for the exercise of enforcement discretion to allow for the orderly and sequential shutdown of multiple units, when multiple units are required to be shut down. (Also refer to Section F.1)

Careful regulatory scrutiny must be given to any deviation from the required actions of the TSs or other license conditions for circumstances involving violations (e.g., missing a required surveillance, inadequate procedures, or lack of testing) or poor planning (e.g., a necessary repair part not available) or misinterpretation of a TS, or some similarly avoidable situation. Licensees should be informed that these instances may be indicative of a more pervasive problem or indicate a trend. In accordance with the Enforcement Policy, enforcement action will normally be taken for the root causes, to the extent violations were involved, that led to the reason for the request for the exercise of enforcement discretion.

C. REGIONAL ENFORCEMENT DISCRETION

A Region-issued Notice of Enforcement Discretion (NOED) is used to notify the licensee of the NRC decision to exercise discretion not to enforce compliance with specific TS LCOs or other license conditions in the limited circumstances described in Section B above, when the noncompliance is nonrecurring and a license amendment would not be practical because the plant will return to compliance with the existing license in so short a period of time that a license amendment could not be issued before compliance is restored. The NRC decision to exercise enforcement discretion is intended to promote safety by not imposing unnecessary actions on an operating plant or by permitting a reactor startup that would otherwise be precluded by TSs under those circumstances where the proposed course of action involves minimal or no safety reduction. Matters that a regional exercise of enforcement discretion may address include:

1. A noncompliance of short duration from the limits of a function specified in an LCO.

2. A noncompliance with an action statement time limit.
3. A noncompliance with a surveillance interval or a one-time deviation from a surveillance requirement.

In each of these situations, it must also be evident that a TS change is impractical because the licensee will return to compliance with the existing license requirements in so short a period of time that a license amendment could not be issued before compliance is restored.

The authority to exercise enforcement discretion is assigned to the Regional Administrator, who may delegate the authority to the Regional Division Director for Reactor Projects. The NOED shall be based on a written request (the Region may act on an oral request, to be promptly followed by a written request) from a licensee. Before issuing an NOED, the Region should consult with the appropriate Assistant Director for Projects, NRR. Whenever Regional enforcement discretion is exercised, the circumstances (including a description of any compensatory measure(s) and an evaluation of the request by the staff) must be documented in a letter to the licensee from the Regional Administrator or his/her designated official. The letter shall specify the maximum period of time for which the enforcement discretion is in effect (not to exceed 14 days, except in unusual circumstances); however, resolution of the condition that led to the request for enforcement discretion should end the period of discretion. The letter should follow the format and content of the NOED letter attached to this guidance, and shall normally be issued within 2 working days of receipt of the licensee's written request. The NRC intention to exercise discretion not to enforce compliance may also be communicated orally, but it must be followed by written documentation.

D. NRR ENFORCEMENT DISCRETION

An NRR-issued NOED is used to notify the licensee of the NRC decision to exercise discretion not to enforce compliance with specific TS LCOs or other license conditions in the limited circumstances described in Section B above. A license amendment associated with the NOED should be processed as an emergency or exigent TS amendment under the provisions of 10 CFR 50.91(a)(5) or (6) and should adhere to NRR Office Letter No. 101 for signature authority guidance. Matters that an NRR exercise of enforcement discretion may address include:

1. A noncompliance with an element specified in a limiting condition for operation until such time as the element can be revised by a license amendment.
2. A noncompliance with an action statement time limit for which a license amendment will be processed to make the extension a permanent change to the TSs.
3. A noncompliance with a surveillance interval or change to a surveillance requirement that will be incorporated by an amendment.

The authority to exercise enforcement discretion is delegated to the appropriate Assistant Director for Projects, NRR. The NOED shall be based on a written request (or in some cases, an oral request followed by a written request) from a licensee. Before issuing an NOED, NRR should consult with the responsible Regional Division Director for Reactor Projects. In addition, NRR should consult with the appropriate NRR ADT Division Director or appropriate staff member. Whenever NRR enforcement discretion is exercised, the circumstances (including a description of any compensatory measure(s) and an evaluation of the request by the staff) must be documented in a letter to the licensee from the appropriate Assistant Director for Projects, NRR. The letter shall specify the maximum period of time for which the exercise of enforcement discretion is in effect (resolution of the condition that led to the request would return the licensee to a condition of compliance with the license), should follow the format and content of the NOED Letter attached to this guidance, and should normally be issued within 2 working days of the receipt of the licensee's written request. The NRC intention to exercise discretion not to enforce compliance may also be communicated orally, followed by written documentation.

E. REQUEST FOR ENFORCEMENT DISCRETION

The NRC should verify that the licensee's request for enforcement discretion includes a discussion of the following:

1. The TS or other license conditions that will be violated.
2. The circumstances surrounding the situation, including the need for prompt action.
3. The safety basis for the request that enforcement discretion be exercised, including an evaluation of the safety significance and potential consequences of the proposed course of action.
4. Any proposed compensatory measure(s).
5. The justification for the duration of the noncompliance.
6. The basis for the licensee's conclusion that the noncompliance will not be of potential detriment to the public health and safety and that a significant safety hazard is not involved.
7. The basis for the licensee's conclusion that the noncompliance will not involve adverse consequences to the environment.
8. A statement that the request has been approved by the facility organization that normally reviews safety issues (Plant Onsite Review Committee, or its equivalent).
9. Any other information the NRC staff deems necessary before making a decision to exercise enforcement discretion.

The request from the licensee should normally be sent by facsimile to the Assistant Director for Projects, NRR, and the Regional Administrator. However, if circumstances do not permit time for the written request to be prepared and sent to the NRC, the licensee may make the request orally, describing to the best of its ability the information required by the staff. The licensee's oral request needs to be followed promptly by written documentation (usually within 24 hours) addressing the criteria listed above. The NRC should verify the licensee's oral or written request, or both, are reviewed and approved by the facility organization that normally reviews safety issues before they are submitted to the NRC. In cases in which a license amendment is appropriate, the written request for the exercise of enforcement discretion should be accompanied by the licensee's request for an emergency or exigent license amendment under the provisions of 10 CFR 50.91(a)(5) or (6). Such a license amendment request should discuss the bases for the licensee's conclusions that the amendment does not involve a significant hazards consideration or irreversible environmental consequences.

If the request is made orally (to be followed with a written request), the NRC must have sufficient information to reach the same conclusions as if it had received a written submission. The followup written request must confirm the information that the NRC relied upon in arriving at its conclusion to exercise enforcement discretion. If a licensee orally requests enforcement discretion, but subsequently determines that no violation of the license will occur, there is no need to follow up with written documentation.

F. ENFORCEMENT

1. Termination of Enforcement Discretion

If the NRC decides to terminate the exercise of enforcement discretion for any reason before the time specified in the notice of enforcement discretion, the NRC should verify that the licensee takes steps to achieve the appropriate plant status and implement the existing TS-required actions upon oral notification of the termination by the appropriate Assistant Director, NRR, or Regional Division Director. The time required to bring the facility into compliance with the TS or license conditions will be determined by the appropriate Assistant Director, NRR or Regional Division Director based on a case-by-case determination.

Upon notification of termination of the exercise of enforcement discretion, the licensee should inform the NRC of the proposed course of action to restore the plant to a condition of compliance with the license. The termination of the exercise of enforcement discretion by the NRC should be documented in a letter to the licensee and should address the actions taken or planned by the licensee, particularly for those cases in which an action statement time limit may be exceeded based on a determination that the proposed course of action is in the best interests of safety.

2. Consideration of Enforcement

The decision to exercise enforcement discretion does not change the fact that a violation will take place, nor does it imply that enforcement discretion is being exercised for any violation that led to the request for an NOED. In each case in which the staff has chosen to exercise enforcement discretion, enforcement action will normally be taken for the root causes, to the extent violations were involved, that led to the noncompliance for which the NOED was issued. The enforcement action in this circumstance is intended to emphasize that a licensee should not rely on the NRC's authority to exercise enforcement discretion as a routine substitute for compliance or for requesting a license amendment. The particular enforcement action to be taken is governed by the guidance in the Enforcement Manual. Any violation issued involving the events leading to an NOED shall be given an EA number which can be obtained from the Office of Enforcement (OE) and assigned to the case regardless of severity level.

The NRC will not normally take enforcement action when the action statement lapsed during the period specified in the NOED and then the exercise of enforcement discretion was terminated, or when the remaining action statement time following the termination of the exercise of enforcement discretion did not allow for the completion of required actions in the most prudent manner considering safety, provided the licensee took prompt corrective action to regain compliance, including an orderly shutdown if required.

G. DISTRIBUTION

Copies of the letter to the licensee shall be distributed according to established Regional and NRR procedures. Further, as a minimum, distribution shall include the following:

1. Regional Administrator
2. Associate Director for Projects, NRR
3. Associate Director for Inspection and Technical Assessment, NRR
4. Division Director, Division of Reactor Projects (E or W), NRR
5. Director, Office of Enforcement
6. Public Document Room and Local Public Document Room
7. Technical Assistant, Division of Reactor Projects - I/II, NRR

The Technical Assistant, Division of Reactor Projects - I/II, NRR, will maintain a file of all Notices of Enforcement Discretion.

H. TRACKING OF NOTICES OF ENFORCEMENT DISCRETION

Each NOED will be assigned a number to permit tracking. The issuing office will assign a number consisting of six digits. The first two digits will indicate the year, the third digit will indicate the number of the Region (or 6 for NRR), and the last three digits will be the sequential number of the NOED for the issuing office. For example, NOED 93-3-017 is the 17th NOED issued by Region III in 1993. To assure proper tracking of all requests for the exercise of enforcement discretion, if a licensee withdraws its request before the staff takes action, the Project Manager should provide a brief note documenting the circumstances to

the Technical Assistant, Division of Reactor Projects I/II, NRR. The Technical Assistant, Division of Reactor Projects I/II, NRR, will assign numbers for all NRR Notices of Enforcement Discretion.

I. SUMMARY

The Regions may exercise enforcement discretion in certain circumstances when a licensee will not be in compliance with TSs or other license conditions for those cases in which a license amendment is not practical, because of the nonrecurring nature of the situation and because the plant will be returned to a condition of compliance with the existing license in so short a period of time that a license amendment could not be issued before compliance is restored.

NRR may exercise enforcement discretion in certain circumstances when a licensee will not be in compliance with the TSs or other license conditions and a license amendment is practical. NRR also has the lead to exercise enforcement discretion with regard to issues of a generic nature, whether or not an amendment to the license is warranted.

If a TS will be violated before a decision can be made to exercise enforcement discretion, or if the NRC decides not to exercise enforcement discretion, the licensee must take the action required by the TS (except as stated in 10 CFR 50.54(x)). The exercise of enforcement discretion is an option available to the NRC staff that must not be used unless the staff is clearly satisfied that such action is consistent with the public health and safety. Notwithstanding the decision to exercise enforcement discretion, enforcement action will normally be taken in accordance with the Enforcement Policy for violations that led to the situation that warranted the exercise of enforcement discretion.

END

ATTACHMENT

Docket No(s). XX-XXX

ADDRESSEE

LICENSEE: _____

SUBJECT: NOTICE OF ENFORCEMENT DISCRETION FOR (LICENSEE)
REGARDING (PLANT) (TAC No. _____)

By letter dated _____, you requested the U. S. Nuclear Regulatory Commission (NRC) to exercise its discretion not to enforce compliance with the required actions in (IDENTIFY TECHNICAL SPECIFICATION OR LICENSE CONDITION). You informed the NRC on (IDENTIFY DATE/TIME) that the (PLANT) would not be in compliance with (IDENTIFY ACTION REQUIRED BY TS AND DESCRIBE THE NEED FOR THE REQUEST). You provided as justification for continued operation that (SUMMARIZE LICENSEE' S TECHNICAL BASIS FOR OPERATION IN A MANNER THAT WOULD NOT BE IN COMPLIANCE WITH ITS LICENSE). In addition, you identified compensatory measures to include (SUMMARIZE IF ANY WERE PROVIDED OR DELETE SENTENCE).

On the basis of our review of your justification, including any compensatory measures identified above, the staff has concluded that this course of action involves minimum or no safety impact, and we are clearly satisfied that this exercise of enforcement discretion is warranted from a public health and safety perspective. Therefore, it is our intention to exercise discretion not to enforce compliance with (IDENTIFY TS OR OTHER LICENSE CONDITION) for the period from (DATE/TIME) to (DATE/TIME). However, we will consider enforcement action, as appropriate, for the conditions that led to the need for this exercise of enforcement discretion.

(SIGNATURE)
REGIONAL ADMINISTRATOR OR DESIGNEE
OR
NRR ASST. DIRECTOR FOR REGION ____ REACTORS

cc: See next page
(attach plant service list)

APPENDIX C

REVIEW TEAM CHARTER

APPENDIX D

NOED REVIEW TEAM CHECKLIST

NOED CHECKLIST

NOED Number: _____ Region: _____ Facility: _____

NOED involves: 1. power reactor
2. research reactor

Is NOED for license conditions only? yes or no
(i.e. not involving regulations)

OPERATIONAL STATUS: 1. operating
2. startup
3. shutdown

CAUSE: 1. equipment failure
2. missed surveillance
3. TS error (includes poorly worded TS)
4. inappropriate system testing/inspection/realignment
5. natural events
6. other - specify

Issued by NRR: ____

____ relief until emer/exig amendment issued
____ license amendment required or involved
____ generic nature

Issued by Region: ____

____ nonrecurring (license amendment not practical) and
____ of short duration (less than or equal to 14 days) and
____ does not involve a license amendment or a generic problem

Was NOED issued by the appropriate office? yes or no

Was the NOED warranted? yes or no

____ avoids an unnecessary plant transient
____ reduces operating or shutdown risk
____ avoids unnecessary delays in plant startup

____ The equipment or system does not perform a safety function in the mode in which operation is to occur; or,

____ The safety function performed by the equipment or system is of only marginal safety benefit, if remaining in the current mode increases the likelihood of an unnecessary plant transient; or,

____ The TS or other license conditions require a test, inspection, or system realignment that is inappropriate for the particular plant conditions, because it does not provide a safety benefit, or may, in fact, be detrimental to safety in the particular plant condition.

Duration issued:_____ days_____ hours
TS LCO AOT: _____ days_____ hours

Involved minimal or no safety impact: yes or no

Does the NOED letter to the licensee document that the NRC staff was satisfied that the enforcement discretion is consistent with protection of public health and safety?
yes or no

Was the appropriate enforcement action taken relative to the root cause for the enforcement discretion?
yes or no

Was the letter issuing enforcement discretion issued with two working days of receipt of the licensee's request letter?
yes or no

Did the office issuing the enforcement discretion use the sample letter in the NRC Inspection Manual Part 9900 guidance?
yes or no

COMMENTS:

- ___ Time lines are discontinuous and confusing.
- ___ Plant conditions not clear.
- ___ Time of issuing verbal approval not stated.
- ___ Issued from a time other than the end of the AOT.
- ___

APPENDIX E

LISTING OF NOTICES OF ENFORCEMENT DISCRETION
ISSUED FROM MARCH 17, 1993, THRU JULY 24, 1994

LISTING OF NOTICES OF ENFORCEMENT DISCRETION
ISSUED FROM MARCH 17, 1993 THRU JULY 24, 1994

NOED TRACKING NUMBER	PLANT NAME(S)	NOED SUBJECT	LICENSEE LETTER	NOED REQUEST DATE	NOED STATUS	NOED ISSUED BY	LETTER DATE
1	OHIO STATE UNIV	PERFORM TEST AT HIGHER CONTROL ROD MAGNE		02/03/93	I	NRR	03/24/93
2	SALEM 1	RESETTING OF TORQUE SWITCH		03/18/93	N		/ /
3	MILLSTONE 2	STRUCTURAL INTEGRITY OF SW LINE		03/26/93	I	REGION	03/26/93
4	93-6-009 NORTH ANNA 2	ESF REACTOR TRIP INSTRUMENTATION		03/26/93	I	NRR	03/26/93
5	RIVER BEND	ROD PATTERN CONTROL SYSTEM		03/26/93	I	REGION	03/26/93
6	SOUTH TEXAS 1	DIGITAL ROD POSITION INDICATION		03/29/93	I	REGION	03/30/93
7	93-6-001 WNP 2	RCIC AUTO SUCTION TRANSFER		04/02/93	I	NRR	04/02/93
8	93-6-010 BEAVER VALLEY 2	REACTOR TRIP BREAKER TESTING		04/06/93	I	NRR	04/09/93
9	93-6-011 VERMONT YANKEE	SCRAM INSERTION TIME LIMITS		04/07/93	I	NRR	04/09/93
10	93-6-012 POINT BEACH 2	RPS & SAFEGUARDS CIRCUIT TESTING		04/09/93	I	NRR	04/15/93
11	LIMERICK 1/2	TS SURVEILLANCE ON BATTERIES		04/23/93	N		/ /
12	93-6-013 DUANE ARNOLD	APP J EXEMPTION-CONTAINMENT AIRLOCK		04/29/93	I	NRR	04/30/93
13	CLINTON	DIVISION II BATTERY CHARGER		05/01/93	N		/ /
14	93-2-001 SURRY 2	PRESSURIZER SAFETY VALVES		05/03/93	I	REGION	05/03/93
15	93-5-001 DIABLO CANYON 1	ONSITE POWER DISTRIBUTION		05/04/93	I	REGION	05/05/93
16	93-6-014 OCONEE 1	CONTROL ROD TRIP INSERTION TIME TST		05/04/93	I	NRR	05/06/93
17	93-6-015 SURRY 2	HIGH PRESSURIZER PRESS. RX TRIP SP		05/04/93	I	NRR	05/06/93
18	93-6-016 PALO VERDE 1/2/3	SNUBBER OPERABILITY		05/14/93	I	NRR	05/18/93
19	93-6-017 BROWNS FERRY 2	LPCI OP. WITH RHR ALIGNED FOR SD		05/17/93	I	NRR	05/19/93
20	93-6-018 SUMMER	TESTING STEAM DRIVEN ESW PUMP		05/25/93	I	NRR	05/27/93
21	93-1-001 INDIAN POINT 3	EDG OPERABILITY		06/01/93	I	REGION	06/03/93
22	93-2-002 SEQUOYAH 1	FUEL MOVE USING AUXILIARY HOIST		06/21/93	I	REGION	06/23/93
23	BRAIDWOOD 2	DEGRADED FLOW OF CCSW		07/01/93	N		/ /
24	GRAND GULF	LOAD SHEDDING AND SEQUENCING SYSTEM		07/07/93	N		/ /
25	93-3-001 COOK 2	WEST CENT CHARGING PUMP OPERABILITY		07/09/93	I	REGION	07/13/93
26	93-3-002 FERMI 2	CCHVAC DIV II SUPPLY FAN REPAIRS		07/09/93	I	REGION	07/13/93
27	93-4-003 SOUTH TEXAS 1	AOT FOR AUX. FEEDWATER PUMP		08/04/93	I	REGION	08/13/93
28	93-6-019 NINE MILE POINT 2	H2 ANALYZERS CONT. ISOL. VALVES		08/05/93	I	NRR	08/06/93
29	93-6-020 BEAVER VALLEY 1	CONTAINMENT AIRLOCK LEAK TESTING		08/11/93	I	NRR	08/13/93
30	93-3-003 DRESDEN 3	CONTAINMENT COOLING SUBSYSTEM LOOPS		08/17/93	I	REGION	08/19/93
31	93-2-003 MCGUIRE 1	EDG HOT RESTART TEST		08/17/93	I	REGION	08/18/93
32	93-1-002 SALEM 1	125 VOLT DC BATTERY		08/25/93	I	REGION	08/26/93
33	93-6-022 SEABROOK	ESFAS INST. SURV. REQUIREMENTS		08/26/93	I	NRR	08/30/93
34	CALVERT CLIFFS 1	CONTROL ROOM EMERGENCY VENTILATION		08/27/93	W		/ /

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NOTICES OF ENFORCEMENT DISCRETION
ISSUED FROM MARCH 17, 1993 THRU JULY 24, 1994

NOED TRACKING NUMBER	PLANT NAME(S)	NOED SUBJECT	LICENSEE LETTER	REQUEST DATE	NOED STATUS	NOED ISSUED BY	LETTER DATE
35	93-2-004	ST LUCIE 1/2	PHYSICAL SECURITY PLAN	08/27/93	I	REGION	08/27/93
36	93-3-004	FERMI 2	MODULAR POWER UNIT	09/07/93	I	REGION	09/08/93
37	93-6-021	SUSQUEHANNA 2	INOPERABLE CONTAINMENT PURGE VALVE	09/08/93	I	NRR	09/10/93
38	93-1-003	INDIAN POINT 2	WC&PPS OPERABILITY REQUIREMENTS	09/13/93	I	REGION	09/15/93
39	93-3-005	PRAIRIE ISLAND 1/2	HELB EFFECTS ON 4160 V BUS	09/13/93	I	REGION	09/15/93
40	93-3-006	BRAIDWOOD 1	INOPERABLE CHARGING PUMP	09/17/93	I	REGION	09/21/93
41	93-2-005	GRAND GULF	JET PUMPS	09/21/93	I	REGION	09/21/93
42	93-4-001	WATERFORD	CONTAINMENT SPRAY SYSTEM	09/28/93	I	REGION	10/01/93
43	93-6-023	WNP 2	ISOL SYS RESPONSE TIME SURVEILLANCE	10/02/93	I	NRR	10/06/93
44	93-2-006	SURRY 1	INOP CONTROL ROD ASSEMBLIES	10/21/93	I	REGION	10/22/93
45	93-6-024	MILLSTONE 3	SUPPL LEAK COLLECTION & RELEASE SYS	10/22/93	I	NRR	10/27/93
46	93-4-002	ARKANSAS 2	ECCS OPERABILITY	10/23/93	I	REGION	10/26/93
47	93-3-007	KEWAUNEE	A RHR PUMP CASING LEAK	11/03/93	I	REGION	11/05/93
48	93-6-025	MILLSTONE 3	SUPPLEMENTARY LEAK COLLECTION ...	11/04/93	I	NRR	11/05/93
49	93-6-026	NORTH ANNA 2	HIGH HEAD SAFETY INJECTION FLOW	11/09/93	I	NRR	11/10/93
50	93-6-027	BRAIDWOOD 1	SG LEAKAGE LIMIT	11/10/93	I	NRR	11/24/93
51	93-5-002	WNP 2	ISOLATION SYSTEM RESPONSE TIMES	11/17/93	I	REGION	11/18/93
52	93-2-007	FARLEY 2	H2 RECOMBINER OPERABILITY	11/29/93	I	REGION	11/30/93
53	93-3-008	POINT BEACH 1/2	EDG ALLOWED OUTAGE TIME	12/03/93	I	REGION	12/07/93
54	SALEM 2	EXTEND EDG ALLOWED OUTAGE TIME	12/03/93	N		/ /	
55	93-6-028	LASALLE 1	INOPERABLE SRVs	12/06/93	I	NRR	12/13/93
56	93-2-008	SURRY 2	CONTROL ROD REPAIRS	12/15/93	I	REGION	12/16/93
57	93-5-003	DIABLO CANYON 2	ONSITE POWER DISTRIBUTION	12/20/93	I	REGION	12/22/93
58	94-3-001	LASALLE 1	CRD POSITION INDICATION SYSTEM	01/05/94	I	REGION	01/07/94
59	94-6-006	WNP 2	ECCS LOGIC SYSTEM FUNCTIONAL TEST	01/13/94	I	NRR	01/14/94
60	94-4-001	SOUTH TEXAS 1	DIGITAL ROD POSITION INDICATION SYS	01/15/94	I	REGION	01/25/94
61	94-3-002	LASALLE 1	RPS INSTRUMENT SURVEILLANCE	01/20/94	I	REGION	01/26/94
62	94-1-004	THREE MILE ISLAND 1	CONTROL ROD MOVEMENT SURVEILLANCE	01/20/94	I	REGION	01/27/94
63	OYSTER CREEK	APRM SCRAM TRIP SURVEILLANCE	01/21/94	N		/ /	
64	94-1-003	SALEM 1	AFW PUMP AOT	01/21/94	I	REGION	01/26/94
65	94-1-001	PEACH BOTTOM 2	MSL RADIATION MONITOR	01/24/94	I	REGION	01/26/94
66	94-6-001	SUSQUEHANNA 2	ACOUSTIC MONITOR ON SRV	01/24/94	I	NRR	01/27/94
67	94-1-002	LIMERICK 1/2	MSV AND INTERCEPT VALVE WEEKLY TEST	01/25/94	I	REGION	01/27/94
68	94-6-002	PERRY	PRIMARY CONTAINMENT AIRLOCKS	01/29/94	I	NRR	02/02/94

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69	94-6-003	RIVER BEND	EXTENSION OF SURVEILLANCE INTERVAL	02/03/94	I	NRR	02/15/94
70	94-3-003	POINT BEACH 1/2	ALL EDGs INOPERABLE	02/09/94	I	REGION	02/11/94
71	94-1-005	GINNA	MANUAL CONT. ISOLATION PUSHBUTTONS	02/15/94	I	REGION	02/16/94
72	94-4-002	RIVER BEND	PENETRATION VALVE LEAKAGE CONTROL	02/17/94	I	REGION	02/28/94
73	94-3-004	BRAIDWOOD 1/2	CONTROL ROOM VENTILATION SYSTEM	02/19/94	I	REGION	02/22/94
74	94-3-005	DRESDEN 3	SBGTS AUTO-ACTUATION	02/22/94	I	REGION	02/24/94
75	94-2-001	GRAND GULF	STANDBY SERVICE WATER SYSTEM	03/04/94	I	REGION	03/08/94
76	94-3-006	QUAD CITIES 1	RCIC OUTBOARD ISOLATION VALVE	03/06/94	I	REGION	03/09/94
77	94-6-004	BRAIDWOOD 2	MSSV LIFT SETPOINTS	03/11/94	I	NRR	03/15/94
78	94-6-004	BYRON 1/2	MSSV LIFT SETPOINTS	03/11/94	I	NRR	03/15/94
79	94-2-003	NORTH ANNA 2	STEAM DRIVEN AUX FEED PUMP OPER	03/11/94	I	REGION	03/14/94
80	94-5-001	DIABLO CANYON 2	MSSV LIFT PRESSURE SETPOINTS	03/14/94	I	REGION	03/15/94
81	94-3-007	BRAIDWOOD 2	UNCAPPED CONCRETE POURING VENTS	03/15/94	I	REGION	03/16/94
82		THREE MILE ISLAND 1	CONTROL ROD DROP TIMES	03/22/94	W		/ /
83	94-1-006	SALEM 1	INCREASED TIME TO REACH HOT SD	04/08/94	I	REGION	05/09/94
84	94-4-003	PALO VERDE 2	AC SOURCES - EDG B OUT OF SERVICE	04/09/94	I	REGION	04/12/94
85	94-3-008	DRESDEN 2	DEGRADED VOLTAGE RELAY SETTINGS	04/14/94	I	REGION	04/15/94
86	94-6-005	MILLSTONE 2	CR EMER VENTILATION SYSTEM	04/14/94	I	NRR	04/21/94
87	94-4-004	COOPER	CR EMERGENCY FILTER SYSTEM	04/18/94	I	REGION	04/21/94
88	94-4-005	ARKANSAS 2	OPER OF TURBINE DRIVEN AFW PUMP	04/22/94	I	REGION	04/26/94
89		BYRON 1/2	CONTAINMENT ISOLATION VALVES	04/22/94	N		/ /
90	94-3-009	BRAIDWOOD 1	INOP EDG	05/16/94	I	REGION	05/19/94
91	94-6-008	COOK 2	APP J LEAK RATE TEST INTERVAL	05/25/94	I	NRR	05/26/94
92	94-6-009	MILLSTONE 2	AUXILIARY FEEDWATER SYSTEM	05/27/94	I	NRR	06/03/94
93	94-6-010	ZION 1/2	APPENDIX J TYPE C TEST EXEMPTION	06/10/94	I	NRR	06/13/94
94	94-3-012	DAVIS BESSE	DELAY SURVEILLANCE TESTING	06/16/94	I	REGION	06/20/94
95	94-3-011	LASALLE 2	RPS SURVEILLANCE	06/16/94	I	REGION	06/20/94
96	94-3-010	QUAD CITIES 2	APRM FUNCTIONAL TESTS	06/16/94	I	REGION	06/20/94
97	94-6-011	DIABLO CANYON 2	FULL STROKE TEST OF RHR CHECK VALVS	06/25/94	I	NRR	06/28/94
98	94-2-004	CRYSTAL RIVER 3	EMERGENCY FEEDWATER TRAIN INOP	07/07/94	I	REGION	07/12/94
99	94-2-002	SEQUOYAH	DIESEL GENERATOR TESTING	07/08/94	I	REGION	07/12/94
100	94-1-007	OYSTER CREEK	OPER OF ADS & CONT SPRAY	07/19/94	I	REGION	07/20/94

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APPENDIX F

Recommended Revision to NRC Inspection Manual Part 9900

NRC INSPECTION MANUAL

PART 9900: 10 CFR GUIDANCE

10 CFR PART 2 APPENDIX C ENFORCEMENT DISCRETION

A. PURPOSE

To guide staff in the Regional Offices and staff in the Office of Nuclear Reactor Regulation (NRR) on the process for the NRC to exercise enforcement discretion with regard to limiting conditions for operation (LCO) in Technical Specifications (TS) or other license conditions. The exercise of enforcement discretion may be warranted to ~~(1) avoid unnecessary plant transients, (2) reduce operational and shutdown risk, and (3) avoid if following the requirements of a specific LCO or license condition would involve an unnecessary plant transient or performance of testing, inspection, or system realignment that is inappropriate with the specific plant conditions, or unnecessary delays in plant startup without a corresponding health and safety benefit.~~ **This type of enforcement discretion can be exercised for a plant at power, in startup, or in shutdown provided the specific applicable criteria set forth below are met.** In each case, the exercise of enforcement discretion is appropriate only when it is temporary and nonrecurring and when the course of action involves minimal or no safety impact and the NRC staff is clearly satisfied that the exercise of discretion is consistent with protecting the public health and safety.

1. In cases where the need for an exercise of enforcement discretion is nonrecurring and of such short duration that a license amendment could not be issued before the need no longer exists, making it impractical to amend the license, the Regions have the lead to exercise enforcement discretion with regard to compliance with Technical Specifications or other license conditions.

~~However, where the need for an exercise of enforcement discretion is expected to exceed the time required to process and issue an emergency license amendment under the provisions of 10 CFR 50.91 (a) (5), such an amendment should be issued, and NRR would take the lead. NRR shall make the determination of whether or not issuance of an emergency license amendment is practical before the need for an exercise of enforcement discretion is expected to come to an end.~~

2. In cases that involve an amendment to the license, NRR has the lead to exercise enforcement discretion with regard to compliance with TSs or other license conditions. ~~NRR also has the lead to exercise enforcement discretion with regard to issues of a generic nature, whether or not an amendment to the license is warranted.~~ **will be responsible for those**

nonrecurring/short duration common condition exercises of discretion that affect more than one plant and may issue discretion in nonrecurring/short duration cases in which the region concludes it does not have the particular expertise/experience necessary to issue the discretion.*

In both cases, the operating license will be violated, but the NRC is exercising its discretion not to enforce compliance with the operating license for a specified time period. This guidance supersedes NRC's previous practice of issuing temporary waivers of compliance with regard to TS LCOs or other license conditions. This guidance implements the recent revisions to Section VII.C of the Enforcement Policy (10 CFR Part 2, Appendix C), published in the Federal Register on March 17, 1993 (58 FR 14308).

B. BACKGROUND

A licensee may depart from its TSs in an emergency, pursuant to the provisions of 10 CFR 50.54(x), without prior NRC approval, when it must act immediately to protect the public health and safety. However, situations occur occasionally which are not addressed by the provisions of 10 CFR 50.54(x), and for which the NRC's exercise of enforcement discretion may be appropriate. Provided that the licensee has not abused the emergency provisions of 10 CFR 50.91 by failing to apply for an amendment in a timely manner, it is appropriate that the NRC have a procedure for expeditious notice to a licensee of NRC's intentions to exercise enforcement discretion under limited circumstances. Actions taken by licensee employees pursuant to such an exercise of discretion will not result in enforcement against the individuals involved.

For an operating plant, the exercise of enforcement discretion is intended to (1) minimize the potential safety consequences of unnecessary plant transients and the accompanying operational risks and impacts or (2) eliminate testing, inspection, or system realignment that is inappropriate for the particular plant conditions. For plants in a shutdown condition, exercising enforcement discretion is intended to minimize shutdown risk by avoiding testing, inspection, or system realignment that is inappropriate for the particular plant conditions, because it does not provide an overall safety benefit, or may, in fact, be detrimental to safety in the particular plant condition.

The exercise of enforcement discretion for plants attempting to start up is expected to occur less often than for operating plants, because delaying startup does not usually leave a plant in a condition in which it could experience undesirable transients. When The criteria discussed below convey that higher threshold. Not only must a finding similar to that for an operating plant be made but when enforcement discretion is exercised to avoid a startup delay, it is to be exercised with respect to equipment or systems only when the NRC staff has at least concluded that, notwithstanding the conditions of the license:

1. The equipment or system does not perform a safety function in the mode in which operation is to occur (e.g., a TS which requires the equipment to be operable in a mode not required by the FSAR); or,

2. The safety function performed by the equipment or system is of only marginal safety benefit, if (a) remaining in the current mode increases the likelihood of an unnecessary plant transient; ~~or, (e.g., allowing PWR with an inoperable piece of TS required equipment, for which there is sufficient redundancy or compensatory action, to proceed from Mode 2 to Mode 1 in order to minimize the time feedwater control is required to be operated in manual) or (b) compensatory equipment not otherwise taken credit for in the accident analysis that performs the same safety function is available; or, *~~
3. The TS or other license conditions require a test, inspection, or system realignment that is inappropriate for the particular plant conditions, because it does not provide a safety benefit, or may, in fact, be detrimental to safety in the particular plant condition.

The letter issuing enforcement discretion allowing for the continuation of a startup must specifically address how one of the above three criteria was satisfied.

The NRC staff is expected to exercise enforcement discretion infrequently. Although requirements may dictate that a plant must be shut down, refueling activities suspended, or plant startup delayed absent the exercise of enforcement discretion, the NRC staff is under no obligation to take such a step merely because the licensee has requested it. The decision to forego enforcement action is discretionary. Where enforcement discretion is to be exercised, it is to be exercised only if the NRC staff is clearly satisfied that such action is warranted from a health and safety standpoint. Enforcement discretion must be exercised on a case-by-case basis, considering the individual plant circumstances.

~~If the NRC decides not to exercise enforcement discretion, the licensee must take the action required by the TSs (except as stated in 10 CFR 50.54(x)). However, the NRC staff and the licensee should be sensitive to special circumstances in which literal compliance with the TSs may not be in the best interest of the public health and safety. Normally in such circumstances, the NRC should issue a request for the exercise of enforcement discretion to allow for the conduct of an orderly shutdown, when a shutdown is required. Similarly, the NRC should issue a request for the exercise of enforcement discretion to allow for the orderly and sequential shutdown of multiple units, when multiple units are required to be shut down. (Also refer to Section F.1)~~

Careful regulatory scrutiny must be given to any deviation from the required actions of the TSs or other license conditions for circumstances involving violations (e.g., missing a required surveillance, inadequate procedures, or lack of testing) or poor planning (e.g., a necessary repair part not available) or misinterpretation of a TS, or some similarly avoidable situation. Licensees should be informed that these instances may be indicative of a more pervasive problem or indicate a trend. In accordance with the Enforcement Policy, enforcement action will normally be taken for the root causes, to the extent violations were involved, that led to the reason for the request for the exercise of enforcement discretion.

C. REGIONAL ENFORCEMENT DISCRETION

A Region-issued Notice of Enforcement Discretion (NOED) is used to notify the licensee of the NRC decision to exercise discretion not to enforce compliance with specific TS LCOs or other license conditions in the limited circumstances described in Section B above, when the noncompliance is nonrecurring and a license amendment would not be practical because the plant will return to compliance with the existing license in so short a period of time that a license amendment could not be issued before compliance is restored. ~~The NRC decision to exercise enforcement discretion is intended to promote safety by not imposing unnecessary actions on an operating plant or by permitting a reactor startup that would otherwise be precluded by TSs under those circumstances where the proposed course of action involves minimal or no safety reduction.~~ Matters that a regional exercise of enforcement discretion may address include:

1. A noncompliance of short duration from the limits of a function specified in an LCO.
2. A noncompliance with an action statement time limit.
3. A noncompliance with a surveillance interval or a one-time deviation from a surveillance requirement.

In each of these situations, it must also be evident that a TS change is impractical because the licensee will return to compliance with the existing license requirements in so short a period of time that a license amendment could not be issued before compliance is restored. **Deviations from performance criteria, surveillance intervals, or test frequencies specifically provided in a regulation or required by a regulation through reference to a recognized code or standard can be handled as an NOED while the appropriate exemption or relief is being processed. ***

The authority to exercise enforcement discretion is assigned to the Regional Administrator, who may delegate the authority to the Regional Division Director for Reactor Projects. The NOED shall be based on a written request (the Region may act on an oral request, to be promptly followed by a written request) from a licensee. Before issuing an NOED, the Region should consult with the appropriate Assistant Director for Projects, NRR. Whenever Regional enforcement discretion is exercised, the circumstances (including a description of any compensatory measure(s) and an evaluation of the request by the staff) must be documented in a letter to the licensee from the Regional Administrator or his/her designated official. The letter shall specify the maximum period of time for which the enforcement discretion is in effect (not to exceed 14 days, except in unusual circumstances), **which must be discussed**; however, resolution of the condition that led to the request for enforcement discretion should end the period of discretion. The letter should follow the format and content of the NOED letter attached (**Attachment A**) to this guidance, and shall normally be issued within 2 working days of receipt of the licensee's written request. The NRC intention to exercise discretion not to enforce compliance may also be communicated orally, but it must be followed by written documentation.

D. NRR ENFORCEMENT DISCRETION

An NRR-issued NOED is used to notify the licensee of the NRC decision to exercise discretion not to enforce compliance with specific TS LCOs or other license conditions in the limited circumstances described in Section B above. A license amendment associated with the NOED should be processed as an emergency or exigent TS amendment under the provisions of 10 CFR 50.91(a)(5) or (6) and should adhere to NRR Office Letter No. 101 for signature authority guidance. Matters that an NRR exercise of enforcement discretion may address include:

1. A noncompliance with an element specified in a limiting condition for operation until such time as the element can be revised by a license amendment.
2. A noncompliance with an action statement time limit for which a license amendment will be processed to make the extension a permanent change to the TSs.
3. A noncompliance with a surveillance interval or change to a surveillance requirement that will be incorporated by an amendment.
4. A noncompliance that is nonrecurring/short duration which affects more than one plant.*
5. A noncompliance that is nonrecurring/short duration for which the region concludes that it does not have the required expertise/experience to issue.*

The authority to exercise enforcement discretion is delegated to the appropriate Assistant Director for Projects, NRR. The NOED shall be based on a written request (or in some cases, an oral request followed by a written request) from a licensee. Before issuing an NOED, NRR should consult with the responsible Regional Division Director for Reactor Projects. In addition, NRR should consult with the appropriate NRR ADT Division Director or appropriate staff member. Whenever NRR enforcement discretion is exercised, the circumstances (including a description of any compensatory measure(s) and an evaluation of the request by the staff) must be documented in a letter to the licensee from the appropriate Assistant Director for Projects, NRR. The letter shall specify the maximum period of time for which the exercise of enforcement discretion is in effect (resolution of the condition that led to the request would return the licensee to a condition of compliance with the license), should follow the format and content of the NOED letter attached to this guidance, and should normally be issued within 2 working days of the receipt of the licensee's written request. The NRC intention to exercise discretion not to enforce compliance may also be communicated orally, followed by written documentation. The issuance of license amendments that involve issues for which NRR has exercised enforcement discretion should normally be issued within three weeks of the NOED. If necessary, an NOED related issue that is part of a larger license amendment request should be handled as a separate amendment if that will expedite issuance. When amendments involving

NOEDs are issued the transmittal letter should indicate the NOED to which the amendment applies.

E. REQUEST FOR ENFORCEMENT DISCRETION

The NRC should verify that the licensee's request for enforcement discretion includes a discussion of the following:

1. The TS or other license conditions that will be violated.
2. The circumstances surrounding the situation, including the need for prompt action.
3. The safety basis for the request that enforcement discretion be exercised, including an evaluation of the safety significance and potential consequences of the proposed course of action.
4. Any proposed compensatory measure(s).
5. The justification for the duration of the noncompliance.
6. The basis for the licensee's conclusion that the noncompliance will not be of potential detriment to the public health and safety and that a significant safety hazard is not involved.
7. The basis for the licensee's conclusion that the noncompliance will not involve adverse consequences to the environment.
8. A statement that the request has been approved by the facility organization that normally reviews safety issues (Plant Onsite Review Committee, or its equivalent).
9. Any other information the NRC staff deems necessary before making a decision to exercise enforcement discretion.

The request from the licensee should normally be sent by facsimile to the Assistant Director for Projects, NRR, and the Regional Administrator. However, if circumstances do not permit time for the written request to be prepared and sent to the NRC, the licensee may make the request orally, describing to the best of its ability the information required by the staff. The licensee's oral request needs to be followed promptly by written documentation (usually within 24 hours) addressing the criteria listed above. The NRC should verify the licensee's oral or written request, or both, are reviewed and approved by the facility organization that normally reviews safety issues before they are submitted to the NRC. In cases in which a license amendment is appropriate, the written request for the exercise of enforcement discretion should be accompanied by the licensee's request for an emergency or exigent license amendment under the provisions of 10 CFR 50.91(a)(5) or (6). Such a license amendment request should discuss the bases for the licensee's conclusions that the amendment does not

involve a significant hazards consideration or irreversible environmental consequences.

If the request is made orally (to be followed with a written request), the NRC must have sufficient information to reach the same conclusions as if it had received a written submittal. The followup written request must confirm the information that the NRC relied upon in arriving at its conclusion to exercise enforcement discretion. ~~If a licensee orally requests enforcement discretion, but subsequently determines that no violation of the license will occur, there is no need to follow up with written documentation.~~ To the extent possible the resident inspector and/or the NRR project manager should be used to verify the oral assertions made by the licensee prior to issuing the discretion. Any assertions made or compensatory actions committed to but not verified prior to the exercise of discretion should be verified as soon as time permits following the issuing of discretion. Documentation of these actions should appear in an inspection report.

~~F. ENFORCEMENT~~ The staff's letter documenting the discretion shall clearly set out which of the licensee's arguments it accepted in reaching its decision. Frequently, licensees make arguments that are not directly relevant to the criteria the staff is to consider. If the staff simply states in the letter that the licensee's arguments were reviewed then it appears all arguments, valid and invalid, were accepted. For instance, while the saving of a few hundred millirem of radiation exposure might be a benefit of a requested issuance of discretion, the fact that the exposure savings occurs should not appear to enter into a reactor safety decision. If factors beyond reactor safety are required to be considered that should be explicitly stated and handled under Section F of this procedure. The sequence of events in the staff's letter should be clear and include: how and when the licensee first requested the discretion, what the length of the AOT/surveillance interval involved was, when the allowed time would end, when (if applicable) verbal discretion was issued, the date of the licensee's followup written request (if the original was made verbally), the specific period of discretion issued starting at the end of the AOT, and if the discretion was terminated before the staff's letter is issued that letter should contain the time the discretion was actually terminated.

There are no provisions in this guidance for the staff to allow the licensee to not follow a TS or license amendment action should it become necessary for the licensee to take such an action while the NRC considers a request for discretion. It is recognized that in cases involving short LCO times or complex issues the staff may have to act before all the information is available. In such a case if the information presented provides a reasonable basis then discretion should be issued. If subsequent information fails to support the initial issuance of discretion then it should be terminated as discussed in Section G. If the licensee was unable to provide the staff an adequate basis before the LCO time ends, the licensee should commence the required action while endeavoring to supply the staff an adequate basis for issuing the discretion.

F. OTHER ACTS OF DISCRETION

There will be rare occasions in which it is necessary for the staff to balance the enforcement of a TS or other license condition requirement against the larger issue of public health and safety. With respect to power reactors, that normally involves the issuance of enforcement discretion in cases in which weather extremes threaten available electrical power supplies such that a licensee requests that certain at power TS testing or startup TS requirement be foregone in order to ensure maximum grid stability. The staff should only exercise such discretion in cases where an actual grid/power pool emergency has been declared.*

There are two only type of circumstances in which enforcement discretion can be exercised for a research or test reactor. The first is the elimination of testing, inspection or system realignment that is inappropriate for the particular plant conditions. The second is a case in which compliance with a TS requirement is balanced against the larger issue of public health and safety. An example of such an case would be issuing discretion to a research reactor while a critical medical procedure or experiment was in progress.*

G. ENFORCEMENT

1. Termination of Enforcement Discretion

If the NRC decides to terminate the exercise of enforcement discretion for any reason before the time specified in the notice of enforcement discretion, the NRC should verify that the licensee takes steps to achieve the appropriate plant status and implement the existing TS-required actions upon oral notification of the termination by the appropriate Assistant Director, NRR, or Regional Division Director. The time required to bring the facility into compliance with the TS or license conditions will be determined by the appropriate Assistant Director, NRR or Regional Division Director based on a case-by-case determination.

Upon notification of termination of the exercise of enforcement discretion, the licensee should inform the NRC of the proposed course of action to restore the plant to a condition of compliance with the license. The termination of the exercise of enforcement discretion by the NRC should be documented in a letter to the licensee and should address the actions taken or planned by the licensee, particularly for those cases in which an action statement time limit may be exceeded based on a determination that the proposed course of action is in the best interests of safety have already lapsed or a case in which the time remaining is too short to safely perform the required action. In effect, the termination letter will frequently modify the discretion to provide the licensee the necessary time to achieve the required plant conditions before actually terminating the discretion completely.

2. Consideration of Enforcement

The decision to exercise enforcement discretion does not change the fact that a violation will take place, nor does it imply that enforcement discretion is being exercised for any violation that led to the request for an NOED. In each case in which the staff has chosen to exercise enforcement discretion, enforcement action will normally be taken for the root causes, to the extent violations were involved, that led to the noncompliance for which the NOED was issued. In any

case where no enforcement action is to be taken, when a violation exists or existed, prior approval of the Office of Enforcement is required. The enforcement action in this circumstance is intended to emphasize that a licensee should not rely on the NRC's authority to exercise enforcement discretion as a routine substitute for compliance or for requesting a license amendment. The particular enforcement action to be taken is governed by the guidance in the Enforcement Manual.

~~Any violation issued involving the events leading to an NOED shall be given an EA number which can be obtained from the Office of Enforcement (OE) and assigned to the case regardless of severity level.~~

~~The NRC will not normally take enforcement action when the action statement lapsed during the period specified in the NOED and then the exercise of enforcement discretion was terminated, or when the remaining action statement time following the termination of the exercise of enforcement discretion did not allow for the completion of required actions in the most prudent manner considering safety, provided the licensee took prompt corrective action to regain compliance, including an orderly shutdown if required.~~

G H. DISTRIBUTION

Copies of the letter to the licensee shall be distributed according to established Regional and NRR procedures. Further, as a minimum, distribution shall include the following:

1. Regional Administrator
2. Associate Director for Projects, NRR
3. Associate Director for Inspection and Technical Assessment, NRR
4. Division Director, Division of Reactor Projects (E or W), NRR, **or Division Director, Division of Operating Reactor Support, as appropriate**
5. Director, Office of Enforcement
6. Public Document Room and Local Public Document Room
7. Technical Assistant, Division of Reactor Projects - I/II, NRR

The Technical Assistant, Division of Reactor Projects - I/II, NRR, will maintain a file of all Notices of Enforcement Discretion.

H I. TRACKING OF NOTICES OF ENFORCEMENT DISCRETION

Each NOED will be assigned a number to permit tracking. The issuing office will assign a number consisting of six digits. The first two digits will indicate the year, the third digit will indicate the number of the Region (or 6 for NRR), and the last three digits will be the sequential number of the NOED for the issuing office. For example, NOED 93-3-017 is the 17th NOED issued by Region III in 1993. ~~To assure proper tracking of all requests for the exercise of enforcement discretion, if a licensee withdraws its request before the staff takes action, the Project Manager should provide a brief note documenting the circumstances to the Technical Assistant, Division of Reactor Projects I/II, NRR. The Technical~~

~~Assistant, Division of Reactor Projects I/H, NRR, will assign numbers for all NRR Notices of Enforcement Discretion; and regional assignments will be made in accordance with regional procedures.~~

~~Until an integrated NOED tracking system is developed each office shall track the NOEDs it issues and be responsible for putting the required data into an office tracking system. Attachment B of this procedure provides the sample data pages that should be used in the office tracking systems. Additionally, each region will be responsible for not only the inspection followup and enforcement decisions for the NOEDs it issues but also for those issued by NRR that apply to that region. Again, until an integrated system is developed, the regions will need to not only put the inspection/enforcement information related to the NRR NOEDs into their systems but also provide it to NRR so that the NRR tracking system will be maintained up to date.~~

J. PUBLIC NOTIFICATION

~~The issuance of each NOED should be result in a same or next day press release from the Region in which the affected plant is located (or announcement on telephone message/electronic bulletin board). Any NOED which is anticipated to be in effect for greater than two weeks shall be noticed in the Federal Register to attempt to solicit public comments while the NOED is in effect. At the end of each calendar quarter NRR shall provide to the Office of Enforcement copies of each NOED issued during the quarter and as well as the supporting licensee's request for publication in NUREG-0940.~~

~~F~~ K. SUMMARY

~~The Regions may exercise enforcement discretion in certain circumstances when a licensee will not be in compliance with TSs or other license conditions for those cases in which a license amendment is not practical, because of the nonrecurring nature of the situation and because the plant will be returned to a condition of compliance with the existing license in so short a period of time that a license amendment could not be issued before compliance is restored.~~

~~NRR may exercise enforcement discretion in certain circumstances when a licensee will not be in compliance with the TSs or other license conditions and a license amendment is practical. NRR also has the lead to exercise enforcement discretion with regard to issues of a generic nature that are multiple plant and common condition, whether or not an amendment to the license is warranted and may issue an NOED normally handled by the region if the region concludes that it does have the required expertise/experience to issue the NOED.~~

~~Under the limited circumstances discussed in Section F, NOEDs can be issued to power reactor licensees for reasons not directly related to reactor safety or to research and test reactors for the two reasons discussed.~~

~~If a TS will be violated before a decision can be made to exercise enforcement discretion, or if the NRC decides not to exercise enforcement discretion, the licensee must take the action required by the TS (except as stated in 10 CFR 50.54(x)). The exercise of enforcement discretion is an option available to the~~

NRC staff that must not be used unless the staff is clearly satisfied that such action is consistent with the public health and safety. Notwithstanding the decision to exercise enforcement discretion, enforcement action will normally be taken in accordance with the Enforcement Policy for violations that led to the situation that warranted the exercise of enforcement discretion.

END

~~ATTACHMENT~~*Requires implementation of policy change

Addressee

SUBJECT: NOTICE OF ENFORCEMENT DISCRETION FOR [LICENSEE NAME] REGARDING
[PLANT NAME(S)] [TAC NO. XXXXXX]

By letter dated [date of letter], you requested that the NRC exercise discretion not to enforce compliance with the actions required in [TS or license condition citation]. That letter documented information previously discussed with the NRC in a telephone conversation on [date] at [time]. You stated that on [date and time] the plant(s) would not be in compliance with [TS/license condition] which would require [statement of the requirement including the AOT and the date and time when the action statement was entered]. You requested that a NOED be issued and be effective for the period [state licensee's requested period for the NOED].

[Briefly restate the licensee's description of the events leading up to the request for the NOED and a summary of their safety rationale for the issuing of the NOED. Include any compensatory measures that the licensee has proposed.]

[State the staff's evaluation of the licensee's safety rationale and cite the explicit criteria in the NOED policy that the licensee satisfied.]

On the basis of the staff's evaluation of your request, [including the compensatory measures described above], the staff has concluded that the issuing of enforcement discretion is warranted because we are clearly satisfied that this action involves minimal or no safety impact and has no impact on public health and safety. Therefore, it is our intention to exercise discretion not to enforce compliance with [TS/license condition] for the period from [date and time] until [if region issued: date and time; if NRR issued: until issuance of an emergency/exigent license amendment or exemption/relief. State if the issued time differs from the requested time and why.]. This letter documents our telephone conversation on [date and time] when we orally issued this notice of enforcement discretion. [If appropriate: We understand that the condition causing this NOED was corrected by you causing you to exit from the [TS/license condition] and from this NOED on [date and time]].

However, as stated in Appendix C to 10 CFR Part 2, enforcement action will normally be taken, to the extent that violations were involved, for the root cause that led to the noncompliance for which this discretion was used.

signature

Director NRR or designee

or

Regional Administrator or designee

ATTACHMENT B

NOTICE OF ENFORCEMENT DISCRETION - DATA SCREEN 1

PLANT(S): REGION: PD:
NOED TITLE:
UNIT MODE: / /
TS SECTION: TS LCO AOT:
STATUS: TRACKING #: ISSUED BY NRR: OR BY REGION:
NOED APPROPRIATE: (IF FALSE, SPECIFY WHY HERE:)
MODIFIED BY NRC: (IF TRUE, SPECIFY HOW HERE:)

LIC VERBAL REQ: @
LIC LETTER DATE: LTR ON FILE: ACC NUMBER:

NRC VERBAL APPR: @
NRC LETTER DATE: LTR ON FILE: ACC NUMBER:

ISSUED NOED PERIOD: FROM @ TO @ OR
FOR DAYS: OR FOR HOURS:

NOTICE OF ENFORCEMENT DISCRETION - DATA SCREEN 2

ROOT CAUSE: EQUIP FAILURE MISSED SURVEILLANCE
NATURAL EVENTS POORLY WORDED TS/TS ERROR
TIME TO COMP. REPAIRS INAPP SYSTEMTEST, REALIGNMENT, ETC.
POOR DESIGN INAD TIME FOR AMEND SUBMISSION
OTHER (IF TRUE, SPECIFY CAUSE HERE:)

NOED INFO: PERMITS PLANT STARTUP
TS REQUIRES IMMEDIATE BUT INAPPROPRIATE ACTION
EXTENSION OF ACTION STATEMENT TIME LIMIT
EXTENSION OF SURVEILLANCE INTERVAL
ONE TIME DEVIATION FORM SURVEILLANCE REQUIREMENT
PROBLEM APPLICABLE TO OTHER PLANTS
NOED EFFECTIVE UNTIL AMENDMENT ISSUED
NOED ON TEMPORARY, NONRECURRING BASIS, NO TIME FOR AMENDMENT

CLOSEOUT DATA:
ROOT CAUSE VIOL: VIOL ISSUED: VIOL COMMENTS:
IR #: DATE:
EA #: DATE:
AMEND TYPE: DATE: AMEND #:
TERMINATED BY NRC: ACTUAL END DATE: @
GENERAL COMMENTS:

APPENDIX G

NOED ANALYSIS TABLES

NOED ANALYSIS TABLES

ENFORCEMENT DISCRETION REQUESTS	NUMBER	PERCENT
ISSUED	90	90
WITHDRAWN	2	2
NOT NECESSARY	8	8
DENIED	0	0
TOTAL	100	100

NOED CAUSE	NUMBER	PERCENT	ENFORCEMENT
EQUIPMENT FAILURE	39	44	7
TIME FOR REPAIRS (ROUTINE MAINT) 12	13		2
INADEQUATE DESIGN	7	8	1
MISSED SURVEILLANCE (OR WILL MISS) 4	16		6
INAPPROPRIATE SYSTEM TESTING/ INSPECTION/REALIGNMENT	3	3	0
TECHNICAL SPECIFICATION ERROR	2	2	0
NATURAL EVENTS (e. g. TEMPERATURE) 10	11		0
INADEQUATE TIME TO ISSUE LIC AMEND	1		0
OTHER	2	2	0
TOTAL	90	100	16

POST NOED ENFORCEMENT STATUS	NUMBER	PERCENT
ENFORCEMENT NOT WARRANTED	71	79
ENFORCEMENT TAKEN	16	18
ENFORCEMENT WARRANTED BUT NOT TAKEN ¹	3	3
TOTAL NOED'S ISSUED	90	100

NOTE 1: Enforcement action not taken on 94-3-005, 94-3-007, and 93-6-023, however all three were of minor safety

significance and were identified by the licensee indicating Probable NCV.

NOED' S ISSUED	NUMBER	PERCENT
REGARDING TS/LICENSE CONDITIONS	84	93
REGARDING REGULATIONS/CODES/STANDARDS (COULD HAVE BEEN RELIEF/EXEMPTION)	6	7
TOTAL	90	100

NOED' S ISSUED	NUMBER	PERCENT	TECHNICALLY ADEQUATE (MINIMAL OR NO SAFETY RISK)
NRR	33	37	33
REGIONS	57	63	57
TOTAL	90	100	90

REACTOR UNIT OPERATING STATUS	NUMBER ²	PERCENT
OPERATING	84	84
STARTUP (INVOLVES MODE CHANGE)	11	11
SHUTDOWN	5	5
TOTAL	100	100

NOTE 2: Includes NOED's which applied to multiple units, some in different modes.

NOED TIMELINESS	NUMBER	PERCENT
ISSUED WITHIN 2 WORKING DAYS	68	75
ISSUED WITHIN 5 WORKING DAYS	15	17
ISSUED GREATER THAN 5 WORKING DAYS	7	8
TOTAL	90	100

NOED FREQUENCY	CALCULATION	RESULT
$\frac{\text{NOED'S}}{\text{SITE-YEAR}}$	$\frac{89 \text{ COMMERCIAL SITE NOED'S ISSUED}}{69 \text{ SITES} \times 1.33 \text{ YEARS}}$	$\frac{1.0 \text{ NOED}}{\text{SITE-YR}}$
$\frac{\text{NOED'S}}{\text{REACTOR-YEAR}}$	$\frac{99 \text{ COMMERCIAL REACTOR NOED'S ISSUED}}{108 \text{ REACTORS} \times 1.33 \text{ YEARS}}$	$\frac{0.7 \text{ NOED}}{\text{RX-YR}}$

NOTE 3: One NOED involved a research reactor (not a commercial reactor).

LICENSING ACTION TYPE	NUMBER	PERCENT
EMERGENCY	11	34
EXIGENCY	6	19
NORMAL	6	19
RELIEF/EXEMPTION	3 ⁴	9
OTHER(WITHDRAWN, NOTHING ISSUED, SHUTDOWN, ETC)	6	19
TOTAL	32	100

NOTE 4: The report references 6 reliefs/exemptions. Subsequent to the issuance of one NOED, the licensee withdrew its relief request. The other two cases were region issued NOEDs, which had the relief/exemption written into the NOED itself.

LICENSING ACTION TIMELINESS	NUMBER	PERCENT
ISSUED WITHIN 21 DAYS	18	56
ISSUED WITHIN 60 DAYS	10	31
ISSUED GREATER THAN 60 DAYS	4	13
TOTAL	32	100

NOED DISTRIBUTION DATA

<u>Plant Location</u>	<u>NRR</u>	<u>Issued by Region</u>	<u>Total</u>	
Region I	11	9	20	
Region II	6	14	20	
Region III	9	20	29	
Region IV	6	14	20	
TOTAL	32	57	89	(does not include one research reactor NOED issued by NRR)

NOEDs issued per site (Operations SALP rating per NUREG-1214 Rev 13 in parenthesis, some NOEDs may be multi-unit, 90 NOEDs at 69 sites) for the period March 17, 1993 to July 12, 1994:

<u>NOEDs</u>	<u>SITE</u>
6	Braidwood (2)
5	Millstone (2)
4	WNP2 (2)
4	LaSalle (2)
4	Diablo Canyon (1)
4	Surry (1)
3	River Bend (2)
3	North Anna (1)
3	South Texas (2)
3	Point Beach (2)
3	Dresden (3)
3	Salem (2)
2	Beaver Valley (1)
2	Palo Verde (2)
2	Sequoyah (3)
2	Fermi 2 (2)
2	Cook (2)
2	Quad Cities (2)
2	Grand Gulf (1)
2	ANO (1)
2	Susquehanna (1)
1	26 Sites (see next page for plant listing)

0

22 Sites (see next page for plant listing)

NOED DISTRIBUTION DATA (cont.)

<u>1 NOED (26 sites)</u>	<u>0 NOEDs (22 sites)</u>
Ginna (2)	Calvert Cliffs (1)
Nine Mile Pt (2)	Fitzpatrick (2)
Seabrook (2)	Hope Creek (1)
Limerick (1)	Maine Yankee (1)
TMI (2)	Pilgrim (1)
Indian Pt 2 (1)	Haddam Neck (1)
Indian Pt 3 (2)	Brunswick (1)
Oyster Creek (2)	Harris (1)
Peach Bottom (2)	Robinson (1)
Vermont Yankee (1)	Turkey Point (1)
Cooper (2)	Catawba (2)
Waterford (1)	Hatch (2)
Browns Ferry 2 (1)	Vogtle (2)
Farley (1)	Big Rock Pt (2)
Crystal River (2)	Monticello (1)
McGuire (2)	Palisades (3)
Oconee (2)	Clinton (1)
St Lucie (1)	Callaway (1)
Summer (1)	Comanche Peak (2)
Kewaunee (1)	Ft. Calhoun (2)
Byron (1)	San Onofre (1)
Davis Besse (2)	Wolf Creek (1)
Duane Arnold (2)	
Perry (2)	
Prairie Island (1)	
Zion (1)	

NOED NUMBER	PLANT NAME	WEATHER RELATED	STARTUP	RELIEF/ EXEMPTION	OTHER
93-6-012	POINT BEACH 2	COLD			
94-1-001	PEACH BOTTOM 2	COLD			
94-1-002	LIMERICK 1/2	COLD			
94-1-003	SALEM 1	COLD	XXX		
94-1-004	TMI 1	COLD			
94-3-002	LASALLE 1	COLD			
94-3-010	QUAD CITIES 2	HEAT			
94-3-011	LASALLE 2	HEAT			
94-3-012	DAVIS BESSE	HEAT			
94-6-001	SUSQUEHANNA 2	COLD	XXX		
93-2-001	SURRY 2		XXX		
93-2-007	FARLEY 2		XXX		
94-6-009	MILLSTONE 2		XXX		
93-6-015	SURRY 2		XXX		
93-6-016	PALO VERDE 1/2/3		XXX		
93-6-024	MILLSTONE 3		XXX		
93-6-025	MILLSTONE 3		XXX		
93-6-027	BRAIDWOOD 1		XXX		
93-2-004	ST LUCIE 1/2			EXEMPTION	SECURITY
94-6-010	ZION 1/2		XXX	EXEMPTION	
94-6-011	DIABLO CANYON 2			RELIEF	
93-6-013	DUANE ARNOLD			EXEMPTION	
93-6-028	LASALLE 1			RELIEF	
NONE	MILLSTONE 2			RELIEF	
94-3-004	BRAIDWOOD 1/2				TS 3.0.3
94-3-007	BRAIDWOOD 2				TS 3.0.3
NONE	RESEARCH REACTOR				TESTING
TOTAL=27	(27/90= 30%)	10	11	6	4

APPENDIX H

NRR COMMENTS ON DRAFT NOED EGM AND ON REGION COMMENTS

MEMORANDUM FOR: James Lieberman, Director
Office of Enforcement

FROM: Roy P. Zimmerman, Associate Director
for Projects
Office of Nuclear Reactor Regulation

SUBJECT: NRR COMMENTS ON DRAFT NOED EGM AND ON REGION COMMENTS

On July 21, 1994, a charter was approved for a team to review the policy, implementation process, and staff practices for Notices of Enforcement Discretion (NOEDs). Objective 3 of the charter is:

"Review the Office of Enforcement draft enforcement guidance memo (EGM) providing additional guidance on NOEDs, and review comments on EGM provided by the Regions. With the results of the review to date, draft NRR response to EGM for the signature of the Associate Director for Projects, within five working days after all Regional comments have been submitted."

The review team received the last of the Regional comments on August 16th.

NRR agrees that the tracking of all phases of the NOED process (from licensee request through closeout by the NRC, including violations and enforcement) is necessary. The NOED review team has found that the current NRR and regional NOED tracking systems are inadequate to track the entire NOED process and has proposed an expanded LAN-based NOED tracking system that would accomplish this objective. In addition, NRR believes that the proposed tracking system will provide an opportunity to eliminate some duplication between the NOED tracking system and the EA tracking system. Therefore, NRR recommends that the draft EGM be changed so that an EA number need only be assigned to those NOEDs which result in escalated enforcement or are required by the Enforcement Manual to have an EA number for a reason other than a NOED violation. (In addition to changing the draft EGM, this recommendation will require a change to the Enforcement Manual itself). The proposed NOED tracking system would document whether or not a violation was involved in the root cause, the basis for issuing or not issuing an enforcement action, and the EA number if escalated enforcement is warranted. Elimination of an EA number assignment to all NOED violations will simplify both the NOED process and the tracking systems.

James Lieberman

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In addition, we agree that the guidance in the EGM should be included in a revision to Inspection Manual Part 9900. The NOED review team has proposed a number of other additions and clarifications to Part 9900. Therefore, NRR recommends that, after the NOED review team report is issued, OE and NRR issue a single coordinated revision of Part 9900.

Enclosed are NRR's comments on the regions' comments on the draft EGM

The NOED review team is available to meet with you to discuss the specifics of its findings and recommendations especially as they relate to our comments on the draft EGM

Roy P. Zimmerman
Associate Director for Projects

Enclosure:
As stated

ENCLOSURE

NRR COMMENTS ON REGIONAL EGM COMMENTS

Region I comment

"Region I endorses the proposed approach in your memo of July 20, 1994."

NRR comment

NRR in general also endorses the proposed approach in the draft EGM. However, as detailed in our other comments below, NRR has some suggested alternatives to specific parts of the draft EGM.

Region II comment

"The last sentence of the third paragraph should read as follows: OE approval is required for not issuing enforcement action, if a violation is involved in the root cause."

NRR comment

The proposed addition to the sentence is acceptable since it provides clarification.

Region II comment

"We agree with the approach of maintaining a separate tracking system for NOEDs and understand the need for such a system to facilitate review and accountability of NOEDs. However, several members of the staff questioned whether this would more appropriately be tracked within IFS."

NRR comment

NRR also agrees that a separate NOED tracking system is desirable. The NOED review team has found that to adequately track a NOED from the request through the closeout stages, more information is needed in the tracking system than either NRR or the regions currently record. The review team has proposed an expanded LAN-based tracking system that will record significantly more NOED information than the current NOED, IFS or EA tracking systems can. Therefore, NRR does not recommend using the IFS or EA systems to track NOEDs, since the proposed tracking system will suffice. Although cross-accessing information similar to that between IFS and EATS may be a future possibility.

NRR COMMENTS ON REGIONAL EGM COMMENTS (cont.)

2

Region III comment

"We have no specific comments other than we agree with Region IV that if we do initiate a tracking system for NOEDs, we see no purpose in also tracking related violations in the EA system."

NRR comment

See the Region IV comment below.

Region IV comment

"With the requirement that each region track the issuance of, and follow-up enforcement action for, all NOEDs, we question the need to obtain EA numbers for any non-escalated enforcement violations that are related to NOEDs."

NRR comment

NRR agrees. With implementation of the tracking system proposed by the NOED review team, all NOEDs can be tracked throughout the entire process, including enforcement. NRR also proposes to change the requirement in the draft EGM to now require that only those violations that result in escalated enforcement receive an EA number and be tracked by EATS. The review team has proposed that the NOED tracking system be placed on the LAN so that it is readily available for data input and report generation. Thus, NRR, the regions and OE will be able to have ready access to a single source of NOED data with only a minimal need for duplication of tracking systems information.

APPENDIX I

RECOMMENDED INFORMATION TO BE INCLUDED
IN THE NOED TRACKING SYSTEM DATABASE

**RECOMMENDED INFORMATION TO BE INCLUDED IN THE
NOED TRACKING SYSTEM DATABASE**

PLANT NAME(S)
REGION
PROJECT DIRECTORATE
NOED TITLE
UNIT(S) MODE
TS SECTION
TS LCO AOT
NOED STATUS
TRACKING #
NOED ISSUED BY NRR OR BY REGION
NOED APPROPRIATE (IF NOT, EXPLAIN)
MODIFIED BY NRC (IF TRUE, EXPLAIN)
LICENSEE VERBAL REQUEST DATE AND TIME
LICENSEE LETTER DATE
LICENSEE LETTER ON FILE
LICENSEE LETTER ACCESSION NUMBER
NRC VERBAL ISSUANCE DATE AND TIME
NRC NOED LETTER DATE
NRC LETTER ON FILE
NRC LETTER ACCESSION NUMBER
NOED ISSUED FROM DATE AND TIME
NOED ISSUED TO DATE AND TIME OR ISSUED UNTIL AMENDMENT
NOED DURATION IN DAYS
NOED DURATION IN HOURS
ROOT CAUSE (TRUE/FALSE):
 EQUIPMENT FAILURE
 MISSED SURVEILLANCE
 NATURAL EVENTS
 POORLY WORDED TS
 TIME TO COMPLETE REPAIRS
 INAPPROPRIATE SYSTEM TESTING, REALIGNMENT, ETC.
 POOR DESIGN
 INADEQUATE TIME FOR AMENDMENT PROCESSING BY NRC
 OTHER (EXPLAIN)
OTHER INFO (TRUE FALSE):
 PERMITS PLANT STARTUP
 TS REQUIRES IMMEDIATE BUT INAPPROPRIATE ACTION
 EXTENSION OF ACTION STATEMENT TIME LIMIT
 EXTENSION OF SURVEILLANCE INTERVAL LIMIT
 ONE TIME DEVIATION FROM SURVEILLANCE REQUIREMENT
 PROBLEM APPLICABLE TO MULTIPLE PLANTS
 NOED EFFECTIVE UNTIL AMENDMENT ISSUED
 NOED ON TEMPORARY, NON-RECURRING BASIS, NO TIME FOR AMEND.
CLOSEOUT DATA:
 WAS ROOT CAUSE A VIOLATION
 WAS A VIOLATION ISSUED
 IF VIOLATION NOT ISSUED, EXPLAIN WHY
 INSPECTION REPORT NUMBER AND DATE
 ENFORCEMENT ACTION NUMBER AND DATE
 AMENDMENT TYPE, DATE AND NUMBER
 TERMINATED BY NRC
 ACTUAL NOED END DATE AND TIME

NOTICE OF ENFORCEMENT DISCRETION - DATA SCREEN 1

PLANT(S): 12345678901234567890 REGION: 1 PD: 11
 NOED TITLE: 1234567890123456789012345678901234567890123456789012345
 UNIT MODE: 123456789/123456789/123456789
 TS SECTION: 123456789012345 TS LCO AOT: 1234567890
 STATUS: 1 TRACKING #: 12-4-678 ISSUED BY NRR: T OR BY REGION: F
 NOED APPROPRIATE: T (IF FALSE, SPECIFY WHY HERE: memo)
 MODIFIED BY NRC: T (IF TRUE, SPECIFY HOW HERE: memo)
 LIC VERBAL REQ: 12/45/78 @ 1234
 LIC LETTER DATE: 12/45/78 LTR ON FILE: T ACC NUMBER: 1234567890
 NRC VERBAL APPR: 12/45/78 @ 1234
 NRC LETTER DATE: 12/45/78 LTR ON FILE: T ACC NUMBER: 1234567890
 ISSUED NOED PERIOD: FROM 12/45/78 @ 1234 TO 12/45/78 @ 1234 OR 1234567890
 FOR DAYS: 123 OR FOR HOURS: 123

NOTICE OF ENFORCEMENT DISCRETION - DATA SCREEN 2

ROOT CAUSE: T EQUIP FAILURE T MISSED SURVEILLANCE
 T NATURAL EVENTS T POORLY WORDED TS/TS ERROR
 T TIME TO COMP. REPAIRS T INAPP SYSTEM TEST, REALIGNMENT, ET
 T POOR DESIGN T INAD TIME FOR AMEND SUBMISSION
 T OTHER (IF TRUE, SPECIFY CAUSE HERE: memo)
 NOED INFO: T PERMITS PLANT STARTUP
 T TS REQUIRES IMMED BUT INAPPROPRIATE ACTION
 T EXTENSION OF ACTION STATEMENT TIME LIMIT
 T EXTENSION OF SURVEILLANCE INTERVAL
 T ONE TIME DEVIATION FORM SURVEILLANCE REQUIREMENT
 T PROBLEM APPLICABLE TO OTHER PLANTS
 T NOED EFFECTIVE UNTIL AMENDMENT ISSUED
 T NOED ON TEMPORARY, NONRECURRING BASIS, NO TIME FOR AMENDMENT
 CLOSEOUT DATA:
 ROOT CAUSE VIOL: T VIOL ISSUED: T VIOL COMMENTS: memo
 IR #: 1234567890123 DATE: 12/45/78
 EA #: 1234567890123 DATE: 12/45/78
 AMEND TYPE: 1234567890123 DATE: 12/45/78 AMEND #: 1234
 TERMINATED BY NRC: T ACTUAL END DATE: 12/45/78 @ 1234
 GENERAL COMMENTS: memo

APPENDIX J

SUMMARY OF RECOMMENDATIONS

SUMMARY OF RECOMMENDATIONS

PARAGRA PH REFEREN CE	RECOMMENDATION
3.1	Adopt the applicable portions of the revised Inspection Manual 9900 guidance in Appendix F to eliminate the inconsistencies between the policy and the procedure.
3.1.1	Each NOED issuance letter should document the root cause for the NOED and the NOED tracking system should record the root cause.
3.1.2.1	<p>Clarify the enforcement discretion policy and MC 9900 guidance, to allow NOEDs for circumstances involving the processing of exemption/relief requests.</p> <p>If these types of cases can not be incorporated into the NOED process, develop an alternative process to handle emerging exemption/relief issues of short duration.</p> <p>The guidance and possibly the policy should clarify that a NOED can be exercised for security and other programs referenced in the TS or license conditions when there is a direct nexus to reactor safety.</p>

3. 1. 2. 2	<p>Retain a high standard for issuing an NOED for plants attempting to start up, but broaden the allowable circumstances to accommodate a licensee that has compensatory equipment. Revise the enforcement discretion policy and MC 9900 criteria for startup conditions as follows:</p> <p>Enforcement discretion will likely be exercised less frequently for plants attempting to start up than for operating plants, because delaying startup does not usually leave a plant in a condition in which it could experience undesirable transients. When enforcement discretion is exercised to avoid a startup delay, it is to be exercised for equipment or systems when the NRC staff has at least concluded that, notwithstanding the conditions of the license,</p> <ol style="list-style-type: none"> 1. the equipment or system does not perform a safety function in the mode in which operation is to occur or 2. the safety function performed by the equipment or system is of marginal safety benefit and <ol style="list-style-type: none"> a. compensatory equipment that is not credited in the accident analysis and can perform the same safety function is operable, or b. remaining in the current mode increases the likelihood of an unnecessary plant transient; or, 3. The TS or other license conditions require a test, inspection, or system realignment that is inappropriate for the plant conditions, because it does not benefit safety or may decrease safety in the plant condition.
3. 1. 2. 3	<p>Clarify the enforcement discretion policy and MC 9900 guidance to state that, on rare occasions, natural events such as extreme weather which causes a power demand emergency or grid instability, the staff may exercise enforcement discretion to promote the overall public interest. This involves balancing actions which have minimum or no safety impact with the overall safety benefit of continued reactor operation.</p>

3. 1. 2. 4	<p>Clarify the enforcement discretion policy and MC 9900 guidance to state that enforcement discretion may be warranted for continued operation of a research reactor under rare circumstances.</p> <p>The policy and procedure should be modified to allow the use of NOEDs for permanently shutdown power reactor licensees awaiting license changes necessitated by that condition. Alternatively, another policy should be developed to address enforcement discretion for these largely economic issues that have no impact on reactor safety. In either case, this discretion should only be exercised in situations when a previously submitted license amendment/exemption is desired before processing by the staff could be completed.</p>
3. 1. 2. 5	<p>Clarify MC 9900 guidance to state that the NRC staff must ensure compliance with the TS requirements if it does not verbally issue enforcement discretion before the AOT expires. If compliance requires the licensee to take substantial actions, such as beginning a plant shutdown that may not be in the best interest of safety, then the staff should act quickly on the request for enforcement discretion. However, the licensee must give a sufficient basis for the staff to issue enforcement discretion to allow continued operation beyond AOT expiration.</p>
3. 1. 2. 6	<p>Clarify the MC 9900 guidance to state that NRR should issue multiple plant common condition NOEDs which are short duration, one-time only requests from individual licensees (normally issued by the region). NRR may issue NOEDs when the region has concluded that NRR has the most experience/expertise in the area and has requested NRR to take the lead.</p> <p>The NRC must continue dialogue with licensees to prevent inappropriate NOED requests or inadequate justification. Covering the enforcement discretion policy in a workshop for those both inside and outside the NRC would be beneficial.</p>
3. 1. 3	<p>Summarize the specific basis for the NRC decision in the letter without referring to the licensee's letter except for details and specific licensee arguments that were not relied on. Rewrite the example letter in the MC 9900 guidance to show how the licensee safety basis should be stated, evaluated, and documented and the sequence of events stated.</p>

3.1.4	To ensure that all NOEDs have been documented as closed out, NRR and the regions should verify the accuracy of information in each NOED request to verify that the minimum time period is requested for enforcement discretion. NRR should minimize the time for which the enforcement discretion is in effect by issuing licensing actions which involve enforcement discretion in a timely manner (normally within 3 weeks). Only in special circumstances should NRR take longer than 60 days to close out an action. The closeout information (IR number, EA number, Amendment number, and dates) should be put into the NOED tracking system.
3.2.1	Clarify the MC 9900 guidance to state that the regions should, in closing out the inspection for the NOED, verify the accuracy of licensee information upon which the NOED was based, and as recommended in Sections 3.2.3/4 below, document results in an inspection report and enter appropriate data into the NOED tracking system.
3.2.2	Clarify the MC 9900 guidance to ensure that the root cause is evaluated by the licensee and the staff (to include relevant similar historical events) and is documented in the NOED letter and in the NOED tracking system. Require NRR to open a TAC for any NOED action using four (4) hours or more of total staff time. Update WISP to include a unique two-letter code for NOEDs.
3.2.3/4	Clarify the MC 9900 guidance to ensure each NOED is considered for enforcement action and the result of the enforcement is documented in a routine monthly inspection report. Reference the NOED number in any enforcement action and enter the enforcement information into the NOED tracking system.
3.3	Implement a common NRR and regional NOED Tracking System accessible by the LAN. Appendix E contains information recommended for the NOED tracking system database.
3.4.1	Formally and promptly notify the public of the issuance of all NOEDs. Publish a notice in the <i>Federal Register</i> for each NOED that involves license amendments or will be in effect for 14 days or longer. On an interim basis to evaluate the public benefit, consider issuing a press release or establish an electronic bulletin board or recorded telephone message for other NOEDs that are exercised. Collect all NOEDs and periodically publish them in NUREG-0940 along with other enforcement actions.

3. 4. 2	<p>Assign responsibility for NOED oversight to a senior manager not involved in the daily tasks of the NOED program; possibly a manager in NRR/PMAS or OE. (The team recognizes that there may be resource and/or expertise difficulties with both groups proposed. However, the team concluded that independence from the process was a more significant consideration). Assign a single office to issue all guidance on the NOED program. Assign responsibility for successfully implementing the NOED program to the Assistant Directors of Projects in NRR and the Division Directors of Reactor Projects in the regions with direct accountability in their performance appraisals. Have the NOED oversight manager prepare an annual report that evaluates the implementation of the NOED program for distribution to EDO, NRR, OE, and regional senior managers.</p>
3. 5. 1	<p>Update the NOED database with the team findings and make the recommended changes to the MC 9900 guidance for the tracking system discussed in paragraphs 3. 5. 2 and 3. 5. 3.</p>
3. 5. 2/. 3	<ul style="list-style-type: none"> (1) Revise the database to include all of the information in Appendix I. (2) Input the data corrections found by the review team into the NOED tracking system database. (3) Update the database for at least all NOEDs issued since March 17, 1993, to supply all missing information in the revised database. (4) Make a revision of the NRR database available to the regional offices for the short term. (5) Implement a LAN-based version of the NOED tracking system in the long term. (6) Maintain a hard copy file on each NOED similar to the OE enforcement action files.